

A STUDY ON HUMAN RIGHTS

By

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## PREFACE

Few, if any, students of the social sciences progress far in their respective fields without coming to a realization that one of the greatest imperfections or shortcomings of the American democratic system lies in the inequality of the human rights enjoyed by the citizens of the United States. Along with this awakening to inequalities here in the United States there usually comes a further realization that similar inequalities exist in other national states of the world.

It requires little knowledge of world history to come to the further realization that a major cause of internal dissension, international strife, disloyal groups, and rival ideologies lies at the roots of this very inequality of rights enjoyed by peoples throughout the world. While searching for a thesis subject at the beginning of my graduate work, my main thesis adviser, Dr. R. E. Powers, suggested the subject of "human rights." I welcomed this opportunity to do further study on this important problem.

The plan of my study on human rights was to first discuss briefly the historical background of the human rights doctrine by examining the ideas held by a few of the outstanding political thinkers in the various periods of history. This was to be done in an attempt to explain and define human rights. Next, it was intended to make a survey of the provisions in

the Constitutions of Russia and the United States which are supposed to safeguard and guarantee the basic human freedoms. The difference between theory and practice was then to be pointed out in an effort to show how human rights are being violated in both of these countries. These two nations were selected for this brief study because, to a large degree, the future of the human rights doctrine is within their power.

The last part of my study was to be concerned with a review of the efforts of the United Nations through the Commission on Human Rights to draft an International Bill of Human Rights. Some of the problems involved in such a huge task were to be discussed, and the future hopes for such an International Bill, if finally accepted by the United Nations, were to be given brief consideration. I feel that I have fulfilled the plan of the study.

I would like to take this opportunity to acknowledge a deep debt of gratitude to my thesis advisers, Drs. Robert E. Powers and Roscoe R. Oglesby. Dr. Powers not only suggested the subject of my thesis, but patiently tolerated my shortcomings and rendered invaluable advice and assistance throughout the paper. I also received advice and encouragement from Dr. Oglesby, and the worthwhile knowledge I gained in his Political Science Seminar class made it possible for me to complete the paper.

C. A. W.



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## CHAPTER I

## HISTORICAL BACKGROUND OF THE HUMAN RIGHTS DOCTRINE

A. General Background

The struggle for the rights of man has occupied the minds of ecclesiastics, philosophers and kings ever since man has lived in any kind of organized society. They have ever sought answers to the questions of what, if any, were the "inalienable" rights of the individual and how they could be guaranteed and safeguarded.<sup>1</sup>

It is a recognized fact that in the world today there are many groups of people who are not allowed to enjoy the basic human rights which are taken for granted in some countries and without which human beings could not live in dignity and freedom. This inequality of man has been one of the greatest causes of national and international conflict.<sup>2</sup> It was one of the main reasons why the first and second world wars were fought - "to make the world safe for democracy" - in other words, to make the world a safe place in which man could live and enjoy his fundamental rights, governed by laws made by him.<sup>3</sup>

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<sup>1</sup>"Evolution of Human Rights," United Nations Weekly Bulletin, I, (August 12, 1946), p. 1.

<sup>2</sup>Eleanor Roosevelt, "The Promise of Human Rights," Foreign Affairs, XXVI (April, 1948), p. 470.

<sup>3</sup>H. Lauterpacht, An International Bill of the Rights of Man, (New York: Columbia University Press, 1944), p. 6.

Going farther with this same idea, it was expressed by the leaders of the United Nations, Franklin D. Roosevelt, in his "Four Freedoms" address to Congress on January 6, 1941, and by Winston Churchill when he said the war must end "with the enthronement of human rights."<sup>4</sup> It was felt by Eleanor Roosevelt, the United States delegate to the United Nations Commission on Human Rights, that an international recognition of the rights of man everywhere would become one of the cornerstones on which peace could be built.<sup>5</sup>

The slogan, "to make the world safe for democracy," was more than just a bit of war propoganda during the first world war. It was the result of two basic facts. First, it was realized that the peace of the world depended upon the ability of international society to secure the inalienable human freedoms through democracy. Secondly, any legal order, international or other, has failed to fulfill its purpose if it does not protect effectively the ultimate unit of all law - the individual human being.<sup>6</sup>

In a lecture given during March, 1948, Professor Arthur N. Holcombe of Harvard University, quoting from a recent annual report of the Standard Oil Company of New Jersey, pointed out that:

If we are to have a world at peace, we must make substantial and steady progress toward elimination

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<sup>4</sup>Ibid.

<sup>5</sup>Roosevelt, op. cit., p. 471

<sup>6</sup>Lauterpacht, op. cit., pp. 6-7.

of the underlying causes of war - chief among them poverty and want, prejudice, fear, and the suppression of the rights of man.<sup>7</sup>

In this present century, the sovereign state, in an unprecedented ascendancy of power, has become the almost unsurpassable barrier between man and the law of mankind. The human being has become a mere object of international law. All kinds of treaties have been made to protect the individual in some way, but the basic claims of human personality to equality, liberty, and freedom against arbitrary will of the state have remained outside the influence of international law to a great extent.<sup>8</sup> The law of nature and natural rights, not being sufficient within themselves, must have positive enactments of the law of the society of states. Such enactments will then serve as the foundation of their ultimate validity and as a standard of their approximation to justice.<sup>9</sup>

The main problem of law and politics has always been the conflict between the individual and the state. This has been due largely to two conflicting theories which have received general acceptance as tenets of American democracy - that the state has no valid right to exact obedience from the individual except as a means to secure his welfare, and that the state as a political institution has come to be

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<sup>7</sup>Arthur N. Holcombe, Human Rights in the Modern World, (New York: New York University Press, 1948), p. 1.

<sup>8</sup>Lauterpacht, op. cit., p. 5.

<sup>9</sup>Ibid., p. 3.

regarded as a symbol of civilized man in his progress toward the full realization of his faculties.<sup>10</sup>

The substance of the natural rights of man has been:

. . . . the denial of the absoluteness of the State and of its unconditional rights to exact obedience; the assertion of the value and of the freedom of the individual against the State; the view that the power of the State and of its rulers is derived ultimately from the assent of those who compose the political community; and the insistence that there are limits to the power of the State to interfere with man's right to do what he conceives to be his duty.<sup>11</sup>

It was not until the seventeenth and eighteenth centuries in the political experiences of England, France and America that the doctrine of natural rights actually reached popular significance. This movement represented the aspect of the eternal struggle to distinguish between "what is" and "what ought to be," and was an assertion that there were certain human rights which have greater value than force and must take precedence over force.<sup>12</sup>

The efforts of a long line of philosophers and jurists, from the Stoics, to the Scholastics, to contemporary thinkers, have resulted in the law of nature coming to stand for the universal, the ordered, the "golden mean" as opposed to the particular, the accidental, the excessive, so often found in actual human life.<sup>13</sup> This concept dates back to antiquity,

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<sup>10</sup>Ibid., p. 16.

<sup>11</sup>Ibid., p. 17.

<sup>12</sup>Crane Brinton, "Natural Rights," Encyclopedia of the Social Sciences, ed. Edwin R. A. Seligman, XI (1933), p. 299.

<sup>13</sup>Ibid.

but the notion that natural rights, the inalienable rights of man, have a higher existence than the law or the state has a more recent origin.<sup>14</sup>

It is the intention of the writer to discuss briefly in this chapter the historical background of the ideas on human rights. The plan of this discussion will be to list the ideas and concepts held by a few of the representative thinkers who have championed this cause of human rights in various periods of history. This will be done in an attempt to explain and define human rights. By definition the terms "human rights," "natural rights," "inalienable rights," and "inherent rights" have very similar meanings and will be used interchangeably throughout this paper.

A second chapter will be devoted to a discussion of how the national constitutions of the two leading nations of today, Russia and the United States, have provided for and guaranteed human rights. The third chapter will be a discussion of the status of the present International Bill of Rights drafted by the Human Rights Commission of the United Nations. Some of the problems and conflicting viewpoints between the United States and Russia which confronted this drafting Commission will be presented. The final chapter will be concerned with a discussion of some of the problems with which the United Nations will be confronted in securing acceptance

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<sup>14</sup>Lauterpacht, op. cit., p. 17.

of the charter and full compliance with its objectives.

### B. The Greek Period

History shows that many previous cultures and societies have observed human rights, but the Athenian was one of the first to justify these rights on a well-based philosophy. The fifth century B. C. saw the coming of the great age of Athenian political philosophy. In an atmosphere of oral discussion and conversation, much active attention was given to political problems. It has been found that many of the ideas held later by Plato and Aristotle had already crystallized before their time. Throughout the Greek Empire, the Athenian had an opportunity to view and compare a large variety of political institutions, all of the city-state type. Every Greek was conscious of the difference between Athens and Sparta, or of the democratic and aristocratic state. He was also conscious of the barbaric government of Persia, and tried to perfect his own institutions to avoid such barbarism. He had further opportunity for comparison of new ideas and concepts when his travels took him to Egypt, to the westward part of the Mediterranean, to Carthage and to the Asiatic hinterland.<sup>15</sup>

Underlying the concept of the Greek state was the idea of harmony in life, shared in common by all its members.

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<sup>15</sup>George H. Sabine, A History of Political Theory, (New York: Henry Holt and Company, 1937), pp. 21-22.



Solon, author of the first Greek constitution, asked that his legislation produce a harmony or a balance between the rich and the poor. Anaximander, at the very beginning of Greek philosophy, had the idea that nature was a system of opposite properties (like heat and cold), divided off from a basic neutral substance. In all the early theorizing about the physical world, harmony or proportion or "justice" was the ultimate principle.<sup>16</sup>

"The sun will not overstep his measures," said Heraclitus (513 B. C.); "if he does, the Erinyes, the handmaids of Justice, will find him out."<sup>17</sup> The Pythagorean philosophy (Pythagoras, 582-507 B. C.) indicated the basic concept of harmony or proportion in music, medicine, physics, and politics. This idea was brought out in Euripides's (480-406 B. C.) "Phoenician Maidens" when Jocasta urged her son to moderation:

Equality, which knitteth friends to friends,  
 Cities to Cities, allies to allies.  
 Man's law of nature is equality.  
 . . . . .  
 Measures for men equality ordained  
 Meting of weights and numbers she assigned.<sup>18</sup>

It was not until the middle of the fifth century B. C., however, that the interest in physical nature changed in the direction of humanistic studies. This great change was brought about by the coming of the itinerant teachers known as the

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<sup>16</sup>Ibid., p. 25.

<sup>17</sup>Ibid.

<sup>18</sup>Ibid.



Sophists. The greatest of these were Socrates, Plato and Aristotle.<sup>19</sup>

This change actually brought about an intellectual revolution because it turned philosophy away from physical nature toward humanistic studies - psychology, logic, ethics, politics and religion. Later philosophers who continued the study of the physical world, such as Aristotle, fortified their theories with observations drawn from human relationships. The Sophists made man the center of all knowledge.<sup>20</sup> Protagoras (480-410 B. C.) made this clear in his famous saying, "Man is the measure of all things, of what is that it is and of what is not that it is not."<sup>21</sup>

Socrates (469-399 B. C.), whose main concept in philosophy was that virtue was knowledge, did not leave any literary works. It remained for his famous pupil, Plato, to take his teachings, expand and develop them, and set them down as they are known today.<sup>22</sup> To explain Socrates's idea of the state, in Plato's Crito he refused the aid of his friends to help him escape jail while awaiting execution, but insisted on obeying the unjust sentence of the state. He based his reason for this, not on the absolute claim

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<sup>19</sup>George H. Sabine, op. cit., p. 27.

<sup>20</sup>Ibid.

<sup>21</sup>Frank Thilly, A History of Philosophy, (New York: Henry Holt and Company, 1914), p. 46.

<sup>22</sup>Ibid., p. 71

of the state to obedience, but to the fact that there existed between him and the state an implicit contract which expected the state to allow freedom of speech. In the Apology Socrates not only defended freedom of speech, but also stated that a man ought not obey laws which treat him unjustly. In the Politicus Plato made Protagoras defend democracy when he said: "While men differ in their aptitude for arts and professions, they have all been assigned a share of justice and fairness which are necessary for the art of government."<sup>23</sup>

As explained in Plato's Republic, the mission of a state was to realize virtue and happiness, and by its constitution provide for the general welfare of men.<sup>24</sup> In Plato's second book of the Republic, Glaucon proclaimed a theory of social contract which was identical with that of Hobbes, Locke and Rousseau. "Justice," he said, "is a contract neither to do nor to suffer wrong."<sup>25</sup>

The rapid changes in the legislation of their own government and their many contacts with foreign peoples during the fifth century made the Greeks familiar with the differences in human customs. They were interested in a principle that could be considered the unchanging core of human nature, held in common by all men regardless of the "vener" of the

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<sup>23</sup>Lauterpacht, op. cit., p. 18.

<sup>24</sup>Plato, The Republic, translated by B. Jowett, (New York: The Modern Library), p. 129.

<sup>25</sup>Ibid., pp. 46-47. cf., David G. Ritchie, Natural Rights, (New York: The Macmillan Company, 1924), p. 25.

"second nature" caused by habit and custom.<sup>26</sup>

One of the first artists to expound the conflict between a duty to human law and a duty to the law of God was Sophocles (496-406 B. C.), in the "Antigone." Antigone performed the funeral rites of her brother and was thereby charged with breaking the law. She replied to Creon:

Yea, for these laws were not ordained of Zeus,  
And she who sits enthroned with gods below,  
Justice, enacted not these human laws.  
Nor did I deem that thou, a mortal man,  
Could'st by a breath annul and override  
The immutable unwritten laws of Heaven.  
They were not born to-day nor yesterday;  
They die not, and none knoweth whence they sprang.<sup>27</sup>

From this identification of nature with the law of God, and the contract of convention with the truly right, has come a concept which has used the law of nature in criticisms of abuses. As Sabine has pointed out, this idea has appeared throughout the history of political thought.<sup>28</sup>

Other Sophists who contributed to the definition of the law of nature and natural rights were Alcidamas who reportedly said, "God made all men free; nature made none a slave;"<sup>29</sup> and Antisthenes (444 B. C.), one of the Socratic group, who taught:

. . . . that the wise man is self-sufficient; and that virtue does not need learning nor arguments,

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<sup>26</sup>George H. Sabine, op. cit., p. 28.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid., p. 30.

<sup>29</sup>David G. Ritchie, op. cit., p. 25.

but deeds alone. The wise man will live not according to the established laws, but according to the laws of virtue.<sup>30</sup>

Aristotle (384-322 B. C.), pupil of Plato, expounded the philosophy that man was a social being and could realize his true self only in society and the state.<sup>31</sup> In describing the state, he explained that it was the last and the perfect association which existed for the sake of complete life. Since man can only live a full life within the state, he declared, "Man is by nature a political animal."<sup>32</sup> In explaining law, Aristotle quoted Lycophron, the Sophist, as saying that law was a contract and that it existed for the security of individual rights.<sup>33</sup>

Later Sophists upset the conservative element in the Greek state by claiming that nobility and slavery were not "natural." The Sophist Antiphon shocked the people of his day by saying there was "naturally" no difference between a Greek and a barbarian.<sup>34</sup>

There had been formulated by the end of the fifth century the idea that nature was a law of justice and right inherent in human beings and the world. This was based on

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<sup>30</sup>Ibid., pp. 32-33.

<sup>31</sup>Frank Thilly, op. cit., p. 93.

<sup>32</sup>William Archibald Dunning, A History of Political Theories, (London: The Macmillan Company, 1936), I, pp. 55-56.

<sup>33</sup>David G. Ritchie, op. cit., p. 25.

<sup>34</sup>George H. Sabine, op. cit., p. 25.

the concept that world order was intelligent and beneficent, and necessarily moralist and religious.<sup>35</sup>

"To live according to Nature" was the Stoic plan for a good life. The Christian theologians who have been so concerned with the corruption of "the natural man" have moral and intellectual affinity with the Stoics.<sup>36</sup> Before Christianity, the Stoics proclaimed that "all men were brothers and that all might be by adoption the sons of God."<sup>37</sup>

The philosophy which grew from the school of Stoicism, founded 300 B. C. by Zeno, was concerned about a plan of salvation and a way of life.<sup>38</sup> The equality of man was held forth in this philosophy, and taken beyond the realm of the state to be considered the focal point of the universal dominion of reason and law, above the laws of any single state.<sup>39</sup> The Stoics considered nature to be the divine element in the universe.<sup>40</sup>

It was within the immeasurable confines of the cosmopolis of the city of God in which the law of reason, being the law of nature, reigns supreme, that the Stoics envisaged the common

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<sup>35</sup>Ibid., p. 32.

<sup>36</sup>David G. Ritchie, op. cit., p. 20.

<sup>37</sup>Ibid., p. 35.

<sup>38</sup>B. A. G. Fuller, A History of Philosophy, (New York: Henry Holt and Company, 1947), p. 247.

<sup>39</sup>H. Lauterpacht, op. cit., p. 19.

<sup>40</sup>David G. Ritchie, op. cit., p. 34.

law of humanity based on the most fundamental of all human rights, the principle of equality.<sup>41</sup>

A development somewhat parallel to the growth of interest in human rights in Greece was taking place in Asia. Some twenty-three centuries ago, Mencius spoke words which inspired countless revolts in China: "The individual is of infinite value, institutions and conventions come next, and the person of the ruler is of least significance." At about the same time the Emperor of Asoka in India proclaimed his edicts which guaranteed freedom of worship and other rights to all his subjects. The rights to personal safety, to reputation, to brotherhood and to justice, were basic precepts of Islam. Hinduism was developing its idea of the kingly Dharma or obligations.<sup>42</sup>

### C. The Roman Period

The contributions made by Rome to the world's stock of political ideas were not so much new or original, but consisted of laying down the legal and political foundations for the Western world. In playing this role she also brought to the new countries of western Europe, engulfed by her expanded empire, the ideas and culture learned from Greece.<sup>43</sup>

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<sup>41</sup>H. Lauterpacht, op. cit., p. 28.

<sup>42</sup>"Evolution of Human Rights," United Nations Weekly Bulletin, I (August 12, 1946), p. 1.

<sup>43</sup>Charles H. McIlwain, The Growth of Political Thought in the West, (New York: The Macmillan Company, 1932), p. 102.

It is generally considered, according to Charles H. McIlwain, that Cicero in his two works, De re Publica and De Legibus, has given the best example of Roman thought under the Republic. These two works are patterned closely in subject matter and in form after Plato's Republic and Laws. In Cicero's Republic as in Plato's, the main theme was the nature of justice.<sup>44</sup> In this dialogue, Scipio stated that men are not drawn together just by chance, but that they have a natural affinity for each other, and consequently group together by consent to law and by community of interest.<sup>45</sup>

Cicero's argument on natural law was as follows:

All nature is ruled by God. Man is the highest of created things; through the possession of reason he is distinct from other creatures and like the Creator. By virtue of the divine element in human nature, man participates in the ultimate principles of right and justice, which are merely elements of the law by which God rules the universe. Further, all men possess by nature the consciousness of those principles; for all men are alike rationally. The oneness of human nature is absolute; "no one is so like to himself as all are like to all," though evil habits may bring apparent diversity. But "to whomsoever reason is given by nature, so also is right reason; hence also law, which is right reason in commanding and forbidding; and if law, also right; but reason is given to all, therefore right is given to all."<sup>46</sup>

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<sup>44</sup>Ibid., p. 107.

<sup>45</sup>Cicero, De re Publica, and De Legibus, trans. Clinton Walker Keyes (Cambridge: Harvard University Press, 1928), p. 65.

<sup>46</sup>Cicero, op. cit., pp. 321, 323, and 333. cf., William A. Dunning, A History of Political Theories, I, pp. 123-124.



According to Dunning's interpretation of this, then the law of nature was the source and the limit of all rights, even natural rights.<sup>47</sup> Cicero's writings left their impression on ancient and medieval thought in the concept of the equality of men due to their common possession of reason and capacity to attain virtue regardless of other differences.<sup>48</sup> Seneca, who died by his own hand at Nero's order in 65 A. D., felt that both the slave and the free could attain virtue because the slave's mind was of necessity his own and could not be taken in bondage like his body.<sup>49</sup>

By the sixth century when Justinian codified Roman law, the law of nature had come to mean something more perfect and distinct than any positive human laws. It was considered an ideal code to be used as the common element among the many human usages, but still separated from positive enacted laws which might conflict with it.<sup>50</sup>

The codification of Roman law, referred to usually as The Institutes of Justinian, came largely from the organization of the legal compilations or summaries made by Justinian's commissioners. Most of these writings had originally been made in earlier centuries, but they had to be altered according to the law of Justinian's time. From these juristic

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<sup>47</sup>William A. Dunning, A History of Political Theories, I, p. 124.

<sup>48</sup>Lauterpacht, op. cit., p. 19.

<sup>49</sup>Ibid.

<sup>50</sup>David G. Ritchie, op. cit., p. 41.



writings it can be seen what men were actually thinking about the state and political conditions. One of the earliest contributors was Gaius, who in the second century wrote:

Whatever any people itself has established as law of it, this is confined to it alone and is called jus civile, as a kind of law peculiar to the state; whatever, on the other hand, natural reason has established among all men, this is observed uniformly among all peoples and is called the jus gentium, as a kind of law which all races employ.<sup>51</sup>

One of the largest contributors to Justinian's books was Ulpian, a Roman jurist of the third century. At the very beginning of Justinian's Institutes Ulpian stated:

Justice is the constant and perpetual wish to render everyone his due.

.....  
Jurisprudence is the knowledge of things divine and human; the science of the just and the unjust.<sup>52</sup>

Another jurist who lived in the same century as Ulpian, Julius Paulus, had this to say about justice:

The word jus is used in many senses; in one that is termed just which is invariably fair and good, as is jus naturale; in another for what is advantageous to all persons or to most in any particular state, as is in jus civile and in our own state jus is applied no less properly to the jus honorarium, and the praetor is said to administer right even when he gives an unjust decision, regard being had not to what the praetor has actually done but to what he ought to do.<sup>53</sup>

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<sup>51</sup>Justinian, The Institutes of Justinian, trans. Thomas Collett Sandars (New York: Longmans, Green and Company, 1948), p. 8. cf., McIlwain, op. cit., p. 122.

<sup>52</sup>Justinian, op. cit., p. 5.

<sup>53</sup>McIlwain, op. cit., p. 126.

McIlwain has shown that private law, concerning private individuals, in contrast to public law, concerning the gods or the state, was by the rules of nature threefold.<sup>54</sup>

The first of these, jus naturale, was what nature taught to all animals, and did not belong exclusively to the human race, so stated Ulpian.<sup>55</sup> The second, jus gentium, was different somewhat from natural law, because it did not apply to all animals, but just to men in their relations to each other.<sup>56</sup> There were two kinds of jus civile, written and unwritten. The written law was a common covenant of the people and was to be considered a restraint against offenses.<sup>57</sup> "The unwritten law is that which usage has established; for ancient customs, being sanctioned by the consent of those who adopt them, are like laws."<sup>58</sup>

With the revival of learning in Europe it was the ideas concerning the law of nature formulated during the Roman period which largely influenced Locke's political theories, then passed on to Rousseau, and then to the fathers of the American Republic.<sup>59</sup>

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<sup>54</sup>Ibid.

<sup>55</sup>Justinian, op. cit., p. 7.

<sup>56</sup>Ibid., p. 9.

<sup>57</sup>Ibid.

<sup>58</sup>Ibid., p. 12.

<sup>59</sup>David G. Ritchie, op. cit., p. 39.

#### D. The Period of the Middle Ages

The concept of the doctrine of the natural rights of man was well accepted by some political philosophers by the end of the Middle Ages. Some of these rights claimed in theory at this time were the right to government by consent, the right to freedom from taxation without representation, and the right to freedom from arbitrary physical restraint which was the principle of the Habeas Corpus Act, 1188.<sup>60</sup>

The political philosophy and political institutions of the Middle Ages were based largely on the newly established Christian religion.<sup>61</sup> The law of nature and the law of God were considered as one law by the early Christian fathers. The strong idea of monotheism at this time gave the law of nature a practical effectiveness unknown in the pre-Christian era.<sup>62</sup>

Most of the patristic writers of the early Middle Ages accepted the view common to St. Paul, the later Greeks, and the Romans, that God had written into the hearts of men a law which made them want to be good and drew them away from evil. The corruption of man began with Adam's expulsion from the Garden of Eden, as explained in Genesis. Because the

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<sup>60</sup>Lauterpacht, op. cit., p. 21.

<sup>61</sup>William A. Dunning, A History of Political Theories, I, p. 131.

<sup>62</sup>McIlwain, op. cit., pp. 149-150.

human race inherited this corruption from Adam, God gave the Mosaic law, and sanctioned human laws and institutions which would curb and remedy all evils which arose from this original sin. For that reason it was felt that coercive law had a divine origin and was not a part of man's original nature, but just a correction of evils arising from man's fall from innocence. In this state of innocence men were equal, but, after the fall, men became unequal and subordinated, one to the other.<sup>63</sup>

The patristic writers felt also that human government had the sanction of God as a corrective measure; consequently, civil obedience was a religious duty.<sup>64</sup>

Let every soul be subject unto the higher powers. For there is no power but to God: the powers that be are ordained of God.

Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.<sup>65</sup>

One of the earliest books of the Middle Ages which exercised great influence on the political thinking of that period was St. Augustine's City of God. The idea brought out was that justice was incomplete if not based upon Christian law

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<sup>63</sup>Ibid., p. 151.

<sup>64</sup>McIlwain, op. cit., p. 151.

<sup>65</sup>Holy Bible, Romans 13:1, 2.

as well as the law of nature.<sup>66</sup> According to St. Augustine, "Justice is that virtue which gives to each his own."<sup>67</sup>

The two most outstanding political philosophers of the Middle Ages were probably John of Salisbury (1115-1180), of England, and Thomas Aquinas (1225-1274), of the Mendicant Orders of Rome. John of Salisbury drew largely from Cicero for his writings, and the essential idea in his Polieraticus was that people should be ruled by a lawful public authority which acted for their general good. His conception of the law was that it was an omnipresent tie in all human relationships which included the ruler as well as the ruled.<sup>68</sup>

Thomas Aquinas' conception of natural law was similar to that of the Stoics: "Natural law is nothing else than the participation in the eternal law of the mind of a rational creature." Since man was inclined to do that which was good, Aquinas stated that natural law took those means which would preserve the life of man and ward off those things which were contrary.<sup>69</sup>

Thomas Aquinas designated a part of natural law as human law, which he subdivided into ius gentium and ius civile. Human law, he explained, had behind it a general authority

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<sup>66</sup>McIlwain, op. cit., p. 160.

<sup>67</sup>William A. Dunning, A History of Political Theories, I, p. 158.

<sup>68</sup>George H. Sabine, op. cit., pp. 246-247.

<sup>69</sup>David G. Ritchie, op. cit., p. 40.

rather than an individual will, which was exercised either by legislation or by custom, or by a public personage to whom the care of the community had been given. Aquinas also stated that human law might be considered as a corollary of natural law, which had been made definite and effective in order to take care of special circumstances in human life.<sup>70</sup>

Aegidius Romanus, a disciple of Aquinas, set forth more distinctly than Aquinas the importance of personal volition and command in the conception of law. He stated: "Nothing is law unless proclaimed by him whose function is to direct to the common good; for if a law is divine and natural, it is enacted by God."<sup>71</sup>

The fifteenth century saw the last of the general lines of mediaeval political philosophy in which the Papacy and Empire were the central point of theory. The trend was toward limitation and qualification of the plenary authority of the Monarch.<sup>72</sup>

The theory of natural law accompanied the birth of the modern state. It provided material for the writings of Grotius and Pufendorf, and influenced Locke in his views on the inalienable rights of man.<sup>73</sup>

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<sup>70</sup>George H. Sabine, op. cit., pp. 253-255.

<sup>71</sup>William A. Dunning, A History of Political Theories, I, pp. 211-212.

<sup>72</sup>Ibid., p. 280.

<sup>73</sup>Lauterpacht, op. cit., p. 30.

### E. The Period of Enlightenment

The rise of the sixteenth century also saw the rise of that area of modern political thought commonly called democratic. This new theory was largely based on the Reformation and its propulsion of two intellectual principles - the right of free inquiry, and the importance of all believers before the eyes of God. At first, the right of free inquiry was meant to apply only to a person's reading the Bible for himself, but it gradually led straight from theological to political criticism, with the universal idea of the importance of all believers supplying the measuring stick for criticism. The first led to liberty and the second to equality.<sup>74</sup>

The doctrine of the natural rights of man was revived and strengthened by two factors in the sixteenth century after it had been temporarily set back by the teachings of the Italian, Machiavelli, who believed in the absolutism of the national state, and believed that the law of nature had nothing to do with politics.<sup>75</sup> The first of these factors was the direct outcome of the Reformation, which was the demand for the natural right of freedom of conscience and religious belief. The Puritans and the Levellers in England declared it to be the foremost inalienable right of their political faith.

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<sup>74</sup>George P. Gooch, English Democratic Ideas in the Seventeenth Century, (Cambridge, Mass.: The University Press, 1927), pp. 1, 8.

<sup>75</sup>William A. Dunning, A History of Political Theories, I, pp. 297, 298.



It was the first limit placed on Parliament by the Revolutionary Army of England, in 1648. It was included in the compact of the colony of Rhode Island in 1663, under the guidance of Roger Williams. The second factor was the theory of the social contract which implied that due to the very nature of man, he possessed certain inalienable rights before entering organized society, and consequently, these rights were not to be relinquished in the social contract.<sup>76</sup>

A prosperous middle class actually evolved the doctrine of natural rights as a rallying point against the defeated feudal warrior and priestly classes, and as a basis for the codification of the desires of the victors. It arose from the specific needs and ambitions of this group.<sup>77</sup>

There were many political theorists in this period who contributed to the codification of the doctrine of natural rights. Some, quite naturally, contributed more than others. One of the first was a disciple of Martin Luther, Philip Melanchthon, (1497-1560). In his work, Opera, he sought to provide a system of moral and political philosophy which would have universal validity. His conception of natural rights was found in the Decalogue - the first table of which included the first four Commandments and determined man's duty toward God, and the second table of which included the

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<sup>76</sup>Lauterpacht, op. cit., p. 22.

<sup>77</sup>Crane Brinton, op. cit., p. 300.



last six Commandments and described man's duty to his fellow-man. For example, the Commandment, "Thou shalt not steal," expressed the right of property.<sup>78</sup>

The Protestant jurist, Winkler, one of several who sought to provide a defined code for the law of nature, followed in the lines of thinking of Melanchthon and enumerated twenty-one articles in which the law of nature was comprehended, and on which the natural rights of men are partly based. His list included:

. . . . the precepts of reverence for God and other religious duties, of self-respect and love of the human kind, of all the common family and social virtues, and of such political virtues as love of country, recognition of liberty and equality, and "liberality or community of goods."<sup>79</sup>

The French philosopher, Jean Bodin, (1530-1596), accepted without question the idea of a law of nature that affected all human relations. To him the law of nature was the basis for deciding right from wrong.<sup>80</sup>

In his famous work, The Law of War and Peace, Hugo Grotius, by general consent, has been considered the first to lay the foundation of international law. Grotius was active in politics in Holland and later in France and Sweden. Although he was greatly respected as a scholar and philosopher, his political philosophy was not new. His greatest success

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<sup>78</sup>William A. Dunning, A History of Political Theories, (London: The Macmillan Company, 1931), II, pp. 16-17.

<sup>79</sup>Ibid., p. 155.

<sup>80</sup>Ibid., p. 85.

was in making fruitful the practical application of theory, especially the theory of the law of nature. He defined the law of nature as "the dictate of right reason, indicating that any act, from its agreement or disagreement with the rational nature, has in it moral turpitude or moral necessity."<sup>81</sup> To him the test of rightness and the criterion in human conduct was the rational conformity to the needs of social existence, and not self-interest. He felt that the original source of all laws was human nature and reason.<sup>82</sup> Grotius declared that man's principle characteristic was freedom based on the law of nature, and that any ruler who did not follow this law should not be obeyed.<sup>83</sup>

Richard Hooker of England, in his Ecclesiastical Polity, 1594, brought out the idea that the law of nature would be binding on all men, regardless of the existence of society and government. He said that men form societies because they cannot live in isolation; a society cannot exist without government; and government in turn must have human or positive law.<sup>84</sup>

In 1649, John Milton wrote that "all men naturally were born free," and were consequently given the right and power of

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<sup>81</sup>Ibid., pp. 153, 164-165.

<sup>82</sup>Frank Thilly, op. cit., p. 244.

<sup>83</sup>George P. Gooch, op. cit., p. 49.

<sup>84</sup>George H. Sabine, op. cit., p. 440.

self-defense and preservation.<sup>85</sup> He stated that the natural freedom of man should be the basis of his right to be ruled by law, and not the arbitrary whim of man.<sup>86</sup>

. . . . this is not the liberty which we can hope, that no grievance ever should arise in the commonwealth, that let no man in this world expect; but when complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for.<sup>87</sup>

Natural right was declared by Thomas Hobbes, English political philosopher of the seventeenth century, to be simply the liberty possessed by every man to do whatever he thought best to protect his existence. On the other hand, as discussed in his book, Leviathan, Hobbes felt that natural law was restraint rather than liberty which governed any unfavorable acts of man to man in regard to preservation. By the law of nature then, man might have to give up some of his claims in consideration of the rights of others.<sup>88</sup>

Like Hobbes, Spinoza, the Portuguese Jewish philosopher living in Holland, felt that natural right was nothing more than man's inherent motive to provide for his self-preservation.

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<sup>85</sup>William A. Dunning, A History of Political Theories, II, p. 242.

<sup>86</sup>Lauterpacht, op. cit., p. 23.

<sup>87</sup>John Milton, "Areopagitica," The Harvard Classics, (New York: P. F. Collier & Son, 1909), III, p. 199.

<sup>88</sup>Thomas Hobbes, Leviathan, (New York: E. P. Dutton and Company, 1914), p. 66.

Conventions, observance of contracts, or whatever means were necessary to bring this about, were justifiable.<sup>89</sup>

The German philosopher, Pufendorf, born the same year as Locke and Spinoza, 1632, was greatly influenced in his thinking and writing by two of his predecessors - Grotius and Hobbes. He followed Grotius in concepts of ethics, but looked to Hobbes in political matters. In his work, De Iure Naturae et Gentium, he gave a clear account of the social and political thought which was first presented by Grotius and Hobbes. He has been credited as being the first to give the term "natural law" the form and name of a science.<sup>90</sup>

Pufendorf felt that a state of nature is characterized by general peace and not by indiscriminate war, and that the law of nature existed to make men respect property rights of others, to make them keep their promises and contracts, and to make them refrain from reciprocal injury. To him, the first law of nature was that a peaceful social life must be provided. He explained that private property was essential to social life and rested on a contract between the holder and the rest of the community. He justified the civil state as a necessity because the majority of men live by impulse

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<sup>89</sup>Westel W. Willoughby, The Ethical Basis of Political Authority, (New York: The Macmillan Company, 1830), pp. 186-7.

<sup>90</sup>William A. Dunning, A History of Political Theories, II, pp. 318-321.

rather than by reason.<sup>91</sup> To avoid such evils was the reason why a commonwealth had to be formed, and the only way to do this was by contract.

. . . . first each individual contracts with each to form a lasting society and to determine by majority vote what arrangements shall be made for the common safety and welfare. Then a vote is taken as to what form of government shall be adopted and those who have joined the society conditionally on the adoption of a particular form are at liberty to withdraw if their preference is not actually carried into effect. Finally, a second contract is made between the designated bearers of governmental power on the one hand, and the rest of the community on the other, - the former agreeing to promote the common welfare and the latter to yield faithful obedience.<sup>92</sup>

Of all the political theorists in the seventeenth and eighteenth centuries who contributed to the codification of the natural rights doctrine, there were two who contributed more than the others, John Locke (1632-1704), of England, and Jean Jacques Rousseau (1712-1778), of France. The influence from Locke's writings was felt stronger by the framers of the American constitution than from any other man. His greatest contribution was on what he called the inalienable rights of man - life, liberty, and property. The individual could not surrender them and the government could not take

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<sup>91</sup>Ibid.

<sup>92</sup>William A. Dunning, A History of Political Theories, II, p. 323.

them away.<sup>93</sup> Locke's ideas can best be explained by quoting from his The Two Treatises on Government;

The state of nature has a law of nature to govern it, which obliges everyone, and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions. . . .<sup>94</sup>

The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth; nor under the dominion of any will or restraint of any law, but what that legislative (power) shall enact according to the trust put in it . . . . freedom of men under government is to have a standing rule to live by, common to everyone of that society, and made by the legislative power erected in it.<sup>95</sup>

Men being, as has been said, by nature all free, equal, and independent, no one can be put out of his estate and subjected to the political power of another without his own consent, which is done by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left, as they were, in the liberty of the state of nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.<sup>96</sup>

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<sup>93</sup>Crane Brinton, op. cit., p. 300.

<sup>94</sup>John Locke, "The Two Treatises on Government," The World's Classics, (New York: Oxford University Press, 1948), p. 5.

<sup>95</sup>Ibid., p. 15.

<sup>96</sup>Ibid., p. 56.

Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his.<sup>97</sup>

Rousseau added nothing new to the doctrine of human rights, but he gave it the additional prestige of having nature supported by mystic strength. The hitherto rational doctrine now had the boost of mysticism.<sup>98</sup>

Rousseau's writing and thinking were colored by his own life, filled with contradictions, maladjustments and feelings of inferiority. He looked to common emotions or instincts in which there was little difference in men, as the basis for his arguments. The middle lower class of people were the heroes of his writings, and he felt this common instinct existed in a purer and less perverted form in this class than in the enlightened and sophisticated class. He condemned the social order and the philosophy which supported such a society that in turn looked down on and despised the lower classes.<sup>99</sup>

It is the common people who compose the human race; what is not the people is hardly worth taking into account. Man is the same in all ranks; that being so, the ranks which are most numerous deserve most respect.<sup>100</sup>

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<sup>97</sup>Ibid., p. 17.

<sup>98</sup>Crane Brinton, op. cit., p. 300.

<sup>99</sup>George H. Sabine, op. cit., pp. 576-577.

<sup>100</sup>Ibid., p. 579.



The social order is a sacred right which is the basis of all other rights.<sup>101</sup>

To renounce our liberty is to renounce our quality of man, and with it all the rights and duties of humanity . . . . Such a renunciation is incompatible with man's nature; for to take away all freedom from his will is to take away all morality from his actions.<sup>102</sup>

If we ask precisely wherein consists the greatest good of all, which ought to be the aim of every system of legislation, we shall find that it is summed up in two objects, liberty and equality - liberty, because any individual dependence is so much force withdrawn from the body of the State; equality, because liberty cannot subsist without it.<sup>103</sup>

The next political work of any great significance published after Locke's The Two Treatises on Government, was Charles, Baron De Montesquieu's, Spirit of the Laws, which was published in 1748. In this book, Montesquieu described liberty as being of two kinds - political and civil. Under political liberty, he felt that a person should feel secure in doing whatever the laws permit. The very core of liberty to him was security against human power and caprice, with the holders of governmental power being subjected to limitations.<sup>104</sup>

As in a country of liberty, every man who is supposed a free agent, ought to be his own

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<sup>101</sup>Jean-Jacques Rousseau, "The Social Contract," The World's Classics, (New York: Oxford University Press, 1948), p. 170.

<sup>102</sup>"Human Rights," Division of Historical Policy Research, Office of Public Affairs, Department of State, (1949), p. 47.

<sup>103</sup>Ibid.

<sup>104</sup>William A. Dunning, A History of Political Theories, II, pp. 410-411.



governor; the legislative power should reside in the whole body of the people.<sup>105</sup>

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted that one man need not be afraid of another.<sup>106</sup>

Liberty is in perfection when criminal laws derive each punishment from the particular nature of the crime. There are then no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.<sup>107</sup>

The last two philosophers that will be considered in this period are David Hume and Jeremy Bentham of England. Hume's important contribution was his attack on the original contract theory as being the explanation and justification of government. He felt that government based on the consent of the people was the main reason for its establishment.<sup>108</sup> Bentham is being included because he is considered the father of Utilitarian Liberalism.

Hume, although following Locke in his concept of human nature, rejected his concept of natural law and natural rights.

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<sup>105</sup>Baron de Montesquieu, The Spirit of the Laws, translated by Thomas Nugent, (New York: P. F. Collier & Son, 1900), I, p. 154.

<sup>106</sup>Ibid., p. 151.

<sup>107</sup>Ibid., p. 185.

<sup>108</sup>William A. Dunning, A History of Political Theories, II, pp. 381-382.

He was interested in habits and utility and not prior rights and social contracts. He defined the state as the result of a human habit of social existence.<sup>109</sup> Hume felt that general opinion was the standard for deciding questions pertaining to morals as well as criticism. The best political form to him was one based on a balance between custom and general opinion.<sup>110</sup>

In his work, Of the Original Contract, Hume explained what he meant by consent to government.

The people if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty, and received laws from their equal and companion.

.....  
 If this, then, be meant by the original contract, it cannot be denied, that all government is, at first, founded on a contract, and that the most ancient rude combinations of mankind were formed chiefly by that principle. In vain are we asked in what records this charter of our liberties is registered. It was not written on parchment, nor yet on leaves or barks of trees. It preceded the use of writing, and all the other civilized arts of life. But we trace it plainly in the nature of man, and in the equality, or something approaching equality, which we find in all the individuals of that species. The force, which now prevails, and which is founded on fleets and armies, is plainly political, and derived from authority, the effect of established government. A man's natural force consists only in the vigour of his limbs, and the firmness of his courage; which could never subject multitudes

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<sup>109</sup>William Y. Elliott, and Neil A. McDonald, Western Political Heritage, (New York: Prentice-Hall, Inc., 1949), p. 668.

<sup>110</sup>Ibid., p. 622.

to the command of one. Nothing but their own consent and their sense of the advantages resulting from peace and order, could have had that influence.<sup>111</sup>

Bentham, in a search for a scientific basis for ethical or moral preferences, also rejected Locke's concept of natural rights. He looked to the principle of utility as a guide. He deduced that good was what gave pleasure and bad was what gave pain. This principle was used by him to judge the state, political action, law, and all other social activities.<sup>112</sup> In his work, "The Principle of Utility," Bentham gave a clear account of what he meant by Utility.

By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government.<sup>113</sup>

Besides his development of the principle of Utility, which later influenced the thinking and writing of John S. Mill, Bentham initiated the reform move in England to give political freedom in the suffrage. He also worked for a reasonable

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<sup>111</sup>David Hume, "Of the Original Contract," The World's Classics, (New York: Oxford University Press, 1948), pp. 148-149.

<sup>112</sup>Elliott and McDonald, op. cit., p. 725.

<sup>113</sup>Ibid., p. 726.

basis of the philosophy of laissez faire which later helped James Mill and Ricardo form the British school of "classical" economics.<sup>114</sup>

#### F. The Contemporary Period

In the last quarter of the eighteenth century, American political thought was influenced tremendously by the writings of Thomas Paine. According to Francis G. Wilson, his was the first all-out attack on the monarchical system, and the first generally accepted and effective stand for American independence. He argued that there was no natural basis for the great difference between kings and subjects under the monarchical system. "It is the pride of kings which throws mankind into confusion."<sup>115</sup> In his book, Rights of Man, which was written in answer to Edmond Burke's attack on the French revolution, Paine set forth his definition of the natural rights of man.

Natural rights are those which always appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the rights of others. Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some

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<sup>114</sup>Ibid., p. 698.

<sup>115</sup>Francis G. Wilson, The American Political Mind, (New York: McGraw-Hill Book Company, Inc., 1949), pp. 76-77.

natural right pre-existing in the individual, but to which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.<sup>116</sup>

At about this same time Samuel Adams declared in a report to a Boston town meeting that "the right to life, liberty, and property was a natural right, a branch of the first law of nature, the right of self-preservation."<sup>117</sup> Men like Samuel Adams worked out the day-to-day political activity in American politics which was essential to winning the Revolution.<sup>118</sup>

While Alexander Hamilton was still a student in college, he stated that mankind was bound by a Divine and immutable law which takes precedence over all human regulations and human institutions. He declared that the law of nature,

. . . which, being coeval with mankind, and dictated by God himself, is, of course, superior in obligations to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity, if contrary to this; and such of them are valid, derive all their authority, mediately, or immediately, from this original.<sup>119</sup>

The above quotation came from Hamilton's work, The Farmer Refuted, which was published in 1775. He concluded by saying that government must be based on the consent of the people,

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<sup>116</sup>Thomas Paine, The Political Works of Thomas Paine, (St. Louis: Belford and Clarke Publishing Company, 1882), p. 262.

<sup>117</sup>Raymond G. Gettell, History of American Political Thought, (New York: D. Appleton-Century Company, 1928), p. 89.

<sup>118</sup>Francis G. Wilson, op. cit., p. 84.

<sup>119</sup>Ibid., p. 72.

and that the primary purpose of government was to maintain and regulate the absolute rights of men.<sup>120</sup>

The outstanding figure in early American politics was Thomas Jefferson, author of the Declaration of Independence, and the unquestioned leader of the Republican party, who formulated political doctrines which greatly influenced the American form of government. His efforts and writings were directed to the spirit of the people rather than toward their political institutions. His basic political principles were trust in the people and fear of a strong government - thus his demand for a government for the people by the people. Because he was afraid that a strong government might encroach on the liberty of the people, he worked determinedly to make the government serve and promote their interests - thus as little government as possible, but popular control over such government.

Jefferson admitted that his ideas were not original, but that he intended his doctrines to be "an expression of the American mind." He followed in the line of thought of John Locke and Thomas Paine. He accepted the prevalent belief in a state of nature, human equality, natural rights, government based upon contract, popular sovereignty, and the right of revolution. He felt that it was the duty of the state to enforce the natural rights of man, but not to take any of

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<sup>120</sup>Ibid., p. 73.

them away. The only way this could be done was to keep a jealous watch on the rulers. Jefferson believed that if the government failed to serve the people properly, they should overthrow it, by revolution if necessary.

Jefferson's political theories were not combined in any one document, but were stated in letters to friends, in official documents, and various pamphlets.<sup>121</sup> Below are excerpts from his writings which concern and explain his theory of the natural rights of man.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.<sup>122</sup> (From "The Declaration of Independence," 1776.)

The God who gave us life gave us liberty at the same time: the hand of force may destroy, but cannot disjoin them. (From "Summary View of the Rights of British America.")

The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I

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<sup>121</sup>Raymond G. Gettell, op. cit., pp. 195-198.

<sup>122</sup>Stuart G. Brown (ed.), We Hold These Truths, (New York: Harper and Brothers, 1941), p. 37.



would not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers, and be capable of reading them. (Letter to Col. Edward Carrington, Jan. 16, 1787.)

. . . . a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inference. (From a letter to James Madison, Dec. 20, 1787.)

Half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can. (From a letter to James Madison, March 15, 1789.)

. . . . I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man. (From a letter to Dr. Benjamin Rush, Sept. 23, 1800.)

. . . . Equal and exact justice to all men  
 . . . . freedom of religion; freedom of the press; freedom of persons under the protection of the habeas corpus; and trial by juries impartially selected - these principles form the bright constellation which has gone before us. . . . (From his First Inaugural Address, March 4, 1801.)

It is an insult to our citizens to question whether they are rational beings or not, and blasphemy against religion to suppose it cannot stand the test of truth and reason . . . . for God's sake, let us freely hear both sides, if we must choose. (From a letter to Nicholas G. DeFief, April 19, 1814)

Where the press is free, and every man able to read, all is safe. (From a letter to Col. Charles Yancey, Jan. 6, 1816.)

Nothing then is unchangeable but the inherent and unalienable rights of man. (From a letter to Major John Cartwright, June 5, 1824.)<sup>123</sup>

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<sup>123</sup>Human Rights, op. cit., pp. 49-50.

James Wilson, one of the earliest professors of constitutional law and a member of the first Supreme Court, worked out most fully the doctrine of natural law as it was accepted in America. His belief was that natural law was progressive; consequently, when men advanced in knowledge and virtue they also became capable of enjoying higher standards. In his writings and teachings he emphasized the sovereignty of the people rather than the sovereignty of the state, and considered the sanction of the law as the consent of the governed rather than the command of the government. A government must have the confidence of the people if it were to long exist. Wilson felt that law did not imply a command of a superior to an inferior, because that would not be consistent with the omnipotence of the Deity in the sphere of legislation, and with the natural equality of all men.<sup>124</sup>

In the fight for the ratification of the American Constitution, Hamilton asked James Madison and John Jay to cooperate with him in writing a series of articles explaining the need, nature and purpose of the new Constitution. These articles first appeared in various New York papers in 1787 and 1788, but were later published under the title, The Federalist. These articles probably best define the political theories underlying the American Constitution as they were believed by the men who wrote it.

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<sup>124</sup>Raymond G. Gettell, op. cit., pp. 89, 167.

In The Federalist was expressed the idea of an original state of nature where all men were equal. A social contract was considered the basis for government and men must give up certain of their natural rights to the established government. The consent of the people was considered necessary for all legitimate authority, and government was declared a necessary evil because of the imperfection of men.<sup>125</sup>

The provisions of the American bills of rights have been spectacular and soul-warming. As the new states came into the American Union, they did little more than copy the traditional provisions. Perhaps the most outstanding was the Declaration of Rights adopted by Virginia on June 12, 1776, which became a part of the permanent state constitution on June 29, 1776. In the preamble is stated:

A Declaration of Rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.<sup>126</sup>

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<sup>125</sup>Raymond G. Gettell, ibid., pp. 132, 135.

<sup>126</sup>Francis G. Wilson, op. cit., pp. 93-94.

In England, at the half-century mark, John Stuart Mill was speaking out for the cause of liberty. He continued in the tradition of Jeremy Bentham, but became more socialistic in views. In his book, On Liberty and Representative Government, he insisted on the fullest possible individual rights because he felt social well-being was closely connected with individual well-being.<sup>127</sup> He further stated that the only reason mankind had for interfering with the liberty of any of its members was self-protection, and the only part of the conduct of any one amendable to society was that which concerns others. "Over himself, over his own body and mind, the individual is sovereign."<sup>128</sup> In his book, On Liberty, he continued in his definition of human liberty:

. . . . the appropriate region of human liberty . . . . comprises, first, the inward domain of consciousness; demanding liberty of conscience . . . . liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions . . . . being almost of as much importance as the liberty of thought . . . . Secondly . . . . liberty of tastes and pursuits . . . . so long as what we do does not harm our (fellow creatures) . . . . Thirdly . . . . the liberty . . . . of combination among individuals . . . . No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; . . . .<sup>129</sup>

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<sup>127</sup>Frank Thilly, *op. cit.*, p. 534.

<sup>128</sup>John Stuart Mill, On Liberty and Considerations on Representative Government, (New York: The Macmillan Company, 1947), pp. 8-9.

<sup>129</sup>Human Rights, op. cit., p. 52.

Another Englishman, Herbert Spencer (1820-1903), declared that "justice demands that each mature man be free to do what he wills, provided he infringe not the equal freedom of another man." In his opinion the state existed just to prevent internal aggressions and foreign invasions. Justice was transgressed when it went farther than that.<sup>130</sup>

Abraham Lincoln's views on the freedom of man can be summed up pretty well by quoting a sentence he used in one of his many speeches: "No man is good enough to govern another man without that other's consent."<sup>131</sup> During the difficult times when he was president his daily life and policies were an expression of American ideals. He expressed the spiritual side of American nationalism in some of his addresses, especially the "Gettysburg Address." Of all his writings and addresses, the "Gettysburg Address" is perhaps as true a representative as any of his views on humanity, the nation and liberty.

Four score and seven years ago our fathers brought forth on this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal . . . . It is for us the living . . . . to be dedicated here to the unfinished work which they who have fought here have thus far so nobly advanced . . . . that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, and for the people, shall not perish from the earth.<sup>132</sup>

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<sup>130</sup>Frank Thilly, op. cit., p. 548.

<sup>131</sup>Francis G. Wilson, op. cit., p. 252.

<sup>132</sup>Albert R. Chandler, (ed.), The Clash of Political Ideals, (A Source Book on Democracy, Communism and the Totalitarian State), (New York: Appleton-Century-Crofts, Inc., 1949), pp. 107-108.

The movement of socialism since the middle of the nineteenth century has been concerned mainly with the laborers in an industrial society, with its policy being formed mainly by organized urban wage-earners. Karl Marx (1818-1883), along with two other Germans, Ferdinand Lassalle and Friedrich Engels, was largely responsible for the doctrinal origins of this "proletarian" socialism.<sup>133</sup> His two most important books, the Communist Manifesto, issued in 1848, and Das Kapital, the first volume of which appeared in 1867, were dominated with the idea of a change of the existing economic and political order. In his Das Kapital, the socialist Bible, Marx attempted to show that a socialist movement must be based upon a systematic interpretation of social evolution and a critical evaluation of the existing system of production and exchange.<sup>134</sup> He felt that the historical development of society was affected by the limitations of human behavior caused by the economic positions men occupy.<sup>135</sup>

Marx declared that the workers must organize and get control of the state, then use the state as a means to dispossess the capitalists. The state would then centralize all means of production under the control of the proletariat, with fairer and better economic arrangements being put into effect which would allow everyone to have the time and oppor-

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<sup>133</sup>Francis W. Coker, Recent Political Thought, (New York: Appleton-Century-Crofts, Inc., 1934), p. 37.

<sup>134</sup>Ibid., p. 41.

<sup>135</sup>Ibid., p. 47.



tunity for "free development, intellectual and social." The overall goal of socialism according to Marx is "a society in which the full and free development of every individual forms the ruling principle." After all of this is accomplished, the state would then disappear because it would no longer be needed.<sup>136</sup> After the state withered away, it naturally could no longer guarantee social equality of men, but that would not be necessary according to Marx, because under true socialism, so-called condition after state disappears, everybody is equal anyway.

In the "Communist Manifesto," Marx enumerated several things that would be done to bring about social equality of men.

1. Abolition of property in land and application of all rents of land to public purposes
- . . . . 3. Abolition of all rights of inheritance . . . . 8. Equal liability of all labor.
- Establishment of industrial armies, especially for agriculture . . . . 10. Free education for all children in public schools. Abolition of children's factory labor in its present form.<sup>137</sup>

The doctrines of Marx have been defended, added to, and applied by Nicolai Lenin and Joseph Stalin in twentieth century Russia. Both Lenin and Stalin have religiously tried to make Communism work, in revolution as well as after. Only the writings of Lenin will be considered here. In his work, State and the Revolution, Lenin summarized his theory of the

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<sup>136</sup>Ibid., p. 61.

<sup>137</sup>Albert R. Chandler, op. cit., pp. 177-178.



dictatorship of the proletariat. Actually it is just a review of Marx and Engel's writings and how they apply to the Russian problems. It is filled with the idea that capitalist bureaucracy must not only be captured but destroyed. In speaking of freedom he stated:

In capitalist society, under the conditions most favorable to its development, we have a more or less complete democracy in the form of a democratic republic. But this democracy is always bound by the narrow framework of capitalist exploitation, and consequently always remains, in reality, a democracy only for the minority, only for the possessing classes, only for the rich. Freedom in capitalist society always remains more or less the same as it was in the ancient Greek republics, that is, freedom for the slave owners. The modern wage-slaves, in virtue of the conditions of capitalist exploitation, remain to such an extent crushed by want and poverty that they "cannot be bothered with democracy," have "no time for politics"; that, in the ordinary peaceful course of events, the majority of the population is debarred from participating in public political life.

Only in Communist society, when the resistance of the capitalists has finally been broken, when the capitalists have disappeared, when there are no longer any classes (that is, when there is no difference between the members of society in respect of their social means of production) only then "does the State disappear and one can speak of freedom."<sup>138</sup>

Perhaps the greatest champion of human rights in the first quarter of the twentieth century was Woodrow Wilson, father of the League of Nations. Since the beginning of recorded history humane thinkers have insisted that men should live in

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<sup>137</sup>Albert R. Chandler, op. cit., pp. 181-183.

peace, and only in a state of peace could they properly develop. Such thinkers have felt that states and nations should be able to settle their differences without resorting to war. Wilson dedicated himself to the task of devising such an international organization in which nations could discuss and settle their disputes. He thought such an organization would protect minority groups and allow them to decide what kind of government they wanted without being influenced by stronger neighboring powers. From all of his writings, only a few notable passages will be quoted here.

The world must be made safe for democracy.

The world has a right to be free from every disturbance of its peace that has its origin in aggression and disregard of the rights of peoples and nations.

There can be no equality of opportunity, the first essential of justice in the body politic, if men and women and children be not shielded in their lives, their very vitality, from the consequences of great industrial and social processes which they cannot alter, control, or singly cope with.<sup>139</sup>

. . . . the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts, - for democracy, for the right of those who submit to authority to have a voice in their own Governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we

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<sup>139</sup>Woodrow Wilson, This Man Was Right, A Collection of Extracts from Addresses, ed., Hugh J. Schonfield, (London: W. H. Alley and Coy, Ltd., 1943), pp. 12-13.

can dedicate our lives and our fortunes, everything that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other. (From his War Message to Congress, April 2, 1917.)<sup>140</sup>

To turn just briefly to the second political ideology which clashed with democratic principles in the twentieth century, the writings of Mussolini will be used to explain the attitude of Fascism toward the freedom and equality of man. Mussolini, along with Hitler, added to and put into effect the Fascist doctrine as it has been known in this century. The quotation below comes from an article written by Mussolini for Enciclopedia Italiana in 1932.

Fascism denies that the majority, by the simple fact that it is a majority, can direct human society; it denies that numbers alone can govern by means of a periodical consultation, and it affirms the immutable, beneficial, and fruitful inequality of mankind which can never be permanently leveled through the mere operation of a mechanical process such as universal suffrage.

. . . . Fascism denies the validity of the equation, well-being=happiness, which would reduce men to the level of animals, caring for one thing only - to be fat and well fed - and would thus degrade humanity to a purely physical existence.<sup>141</sup>

The last to be considered in this chapter are the ideas and writings of Franklin D. Roosevelt. It suffices to say that the birth of the United Nations was due largely to his

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<sup>140</sup>Human Rights, op. cit., pp. 55-56.

<sup>141</sup>Albert R. Chandler, op. cit., p. 210.

his efforts. In a message to Congress on January 6, 1941, he announced his famous "Four Freedoms" doctrine which became a part of the Atlantic Charter. The Atlantic Charter in turn gave emphasis to the idea for an International Bill of Human Rights, which will be discussed in the last chapter of this paper. Below are extracts from some of Roosevelt's addresses, including the "Four Freedoms" address.

There is a mysterious cycle in human events. To some generations much is given. Of other generations much is expected. This generation of Americans has a rendezvous with destiny. In this world of ours in other lands, there are some people, who, in times past, have lived and fought for freedom, and seem to have grown too weary to carry on the fight . . . only our success can stir their ancient hope.

. . . . it is the part of . . . . America to stand for the freedom of the human mind and to carry the torch of truth. . . . Liberty is in the air Americans breathe. Our Government is based on the belief that a people can be both strong and free, that civilized men need no restraint but that imposed by themselves against abuse of freedom.

Democracy, the practice of self-government, is a covenant among free men to respect the rights and liberties of their fellows.

It is our price that in our country men are free to differ with each other and with their Government and to follow their own thoughts and to express them. We believe that the only whole man is the free man.

Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them.

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression - everywhere in the world. The second is

freedom of every person to worship God in his own way - everywhere in the world. The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants - everywhere in the world. The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor - anywhere in the world.<sup>142</sup>

In summary, it can be said that the greatest realization of human rights and human freedoms came with the development of the free enterprise system of the democracies of the West, particularly the United States. There is a clear possibility that should this system disappear, human freedoms as they have been striven for throughout the centuries would also disappear. The twentieth century has seen the terrific clash of democratic principles with the principles of two political ideologies which have little respect for the worth and dignity of the human being.

The rise of Fascism which has in its doctrine: "Fascism . . . . affirms the immutable, beneficial, and fruitful inequality of mankind which can never be permanently leveled . . . .", precipitated World War II and caused all freedom-loving people to be thrown into a life-and-death struggle for survival. The seeds of discord, misery, and hate sewn

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<sup>142</sup>Human Rights, op. cit., pp. 57-58.

in that conflict are now being used as rallying points by that other political ideology, Communism, which threatens free people throughout the world. The Communist concept of freedom, as stated before, is entirely foreign to that found in the democracies of the Western world. The words of Lenin make this point very clear:

Freedom in capitalist society . . . . is, freedom for the slave owners. Only in Communist society, when the resistance of capitalists have finally been broken, when the capitalists have disappeared . . . . only then "does the State disappear and one can speak of freedom."

Russia's efforts since World War II to Communize the world has caused the development of what is now known as two worlds, the "Communist," headed by Russia, and the "Free," headed by the United States, with the fate of human destiny and human rights hanging in the balance.

## CHAPTER II

## HUMAN RIGHTS IN RUSSIA AND THE UNITED STATES

A. Introduction

The purpose of this chapter is to show how the two great powers in the world today, Russia and the United States, have provided for and guaranteed human rights in their constitutions. After pointing out the provisions which guarantee these rights, a discussion will follow which will show how these rights have been violated and how actual practice has differed from the principles set forth in the individual constitutions.

B. Human Rights Guaranteed in the Russian Constitution

If "every state is known by the rights that it maintains," the Soviet Union is unique in its recognition of certain social rights in the 1936 Constitution which is in operation at the present time.

In order to understand the Soviet attitude on human rights, it is necessary to examine some of the comments made by Soviet leaders in regard to human rights as they are set forth in the 1936 Constitution, Chapter X, entitled, "Fundamental Rights and

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<sup>1</sup>Harold J. Laski, A Grammar of Politics, (New Haven: Yale University Press, 1939), p. 30.

<sup>2</sup>Rudolph Schlesinger, Soviet Legal Theory, (London: Butler and Tanner Ltd., 1946), p. 221.



Duties of Citizens." In 1945, Joseph Stalin in his "Report on the Draft Constitution of the U.S.S.R.," stated that the Constitution of Russia has as its main basis the principles of socialism:

. . . . the socialist ownership of the land, forests, factories and other implements and means of production; the abolition of exploitation and of the exploiting classes; the abolition of poverty for the majority and luxury for the minority; the abolition of unemployment; work as an obligation and an honourable duty for every able-bodied citizen in accordance with the formula: "He who does not work, neither shall he eat."<sup>3</sup>

In this report, Stalin declared that bourgeois constitutions are based on the concept that society consists of antagonistic classes--those owning wealth and those not owning wealth, and no matter what party comes to power, the class with the wealth always controls the society. The Constitution of the U.S.S.R., unlike the bourgeois constitutions, is based on the concept that society consists of only two friendly classes, the workers and the peasants, and these working classes are in power.<sup>4</sup>

Stalin stated further that bourgeois constitutions are based on the supposition that nations and races cannot have equal rights, because colonies do not have equal rights in comparison with the mother country. This makes bourgeois constitutions nationalistic or designed for the ruling nations. In contrast, the Constitution of the U.S.S.R. is profoundly international and is based on

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<sup>3</sup>Yearbook on Human Rights for 1946, Prepared by the Commission on Human Rights, (Lake Success: United Nations Publications, 1947), p. 309.

<sup>4</sup> Ibid.

the fact that all nations and races are equal regardless of color, language, cultural level or political development, and past or present strength or weakness. All races and nations must enjoy equal economic, social, political and cultural rights.<sup>5</sup>

Democracy is carried to its logical conclusion in the Soviet Constitution, according to Stalin. Bourgeois constitutions may be divided into two groups as far as democracy goes: one group of constitutions either openly denies or nullifies the equality of individual rights and democratic freedoms; the other group of constitutions openly proclaims democratic principles, but democratic rights and freedoms are stymied by the introduction of reservations and limitations. Equal electoral rights are limited by residential, educational and even property qualifications. The equal rights of citizens do not apply the same to both men and women.<sup>6</sup>

The Constitution of the U.S.S.R. is free from such reservations and limitations. It does not recognize any difference between the rights of men and women, "residents" and "non-residents," the "haves" and "have-nots," the educated and the uneducated. Under it there is complete equality among all citizens.<sup>7</sup>

Finally, Stalin stated that bourgeois constitutions establish the formal rights of citizens, without providing the means

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<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid., p. 10.

for exercising these rights. For example there can be no equality between a master and a workman, a landlord and a peasant, while the former have wealth and influence and the latter have neither. He declared that a hungry, unemployed person does not enjoy personal liberty, and that real liberty could only exist where a man did not have to fear that tomorrow he would go hungry, or lose his job, or be exploited and oppressed. The freedoms of speech, assembly and the press are hallowed statements if the working class is unable to have suitable meeting places, good printing presses, sufficient printing paper, etc. Stalin said the new Constitution of the U.S.S.R. not only established formal equal rights of citizens, but provided for them by legislative acts which have abolished the regime of exploitation. It ensured democratic freedoms by providing the material means necessary for their realization.<sup>8</sup>

The political liberties enumerated in Chapter X of the 1936 Constitution are not new, but have been borrowed with slight change from the constitutions of the constituent republics. Statements of certain freedoms are made, but they are followed by qualifying clauses which indicate that they are intended to be regarded in a different light than similar rights in Western constitutions.<sup>9</sup>

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<sup>8</sup>Yearbook On Human Rights for 1946, pp. 309-310, 316.

<sup>9</sup>Vladimir Gsovski, Soviet Civil Law, (Ann Arbor: University of Michigan Law School, 1948), I, pp. 63-64.

The first right set forth in Chapter X and perhaps the most important is the right to work.<sup>10</sup>

Article 118.--Citizens of the U.S.S.R. have the right to work, that is, the right to guaranteed employment and payment for their work in accordance with its quantity and quality.

The right to work is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment.<sup>11</sup>

This right is obviously considered as an economic opportunity and not a legal right, because its guarantee is based on the socialist organization of the national economy.<sup>12</sup>

Article 119 states that "citizens of the U.S.S.R. have the right to rest and leisure." In regard to this right, the Labor Code of 1937, in Sections 109, 114 and 115, provided that every employee shall be given an uninterrupted rest period of not less than forty-two hours; a leave of not less than twelve working days if the person has been employed five and a half months; and persons working at especially dangerous or noxious work shall be granted an extra leave each year of not less than twelve days.<sup>13</sup>

The right to maintenance in old age, and also in case of sickness or loss of capacity to work is granted in the Constitution.

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<sup>10</sup>Schlesinger, op. cit., p. 221

<sup>11</sup>Soviet Constitution of 1936.

<sup>12</sup>Gsovski, op. cit., p. 66.

<sup>13</sup>Yearbook on Human Rights for 1946, p. 311.

Article 120.--Citizens of the U.S.S.R. have the right to maintenance in old age and also in case of sickness or disability.

This right is ensured by the extensive development of social insurance of factory and office workers at state expense, free medical service for the working people, and the provision of wide network of health resorts for the use of the working people.<sup>14</sup>

In a government communication on social insurance, published on November 14, 1917, Lenin stated that the government by the proletariat of Russia planned to provide social insurance for hired workers and also for the poor in towns and villages. It planned to extend insurance to all hired workers without exception; extend insurance to cover all forms of loss of capacity to work; assure all expenditure on insurance by employees; provide compensation in cases of unemployment and loss of capacity to work; and provide for freedom of action of insured persons in all insurance organizations.<sup>15</sup>

A "Decree of the Council of People's Commissars of the U.S.S.R. of 9 August, 1937, on Leave for Treatment at Sanatoria and Health Resorts," stated that all able-bodied workers who need such treatment will be given leave for treatment at sanatoria and health resorts with a payment of an allowance by the government. Free travel will be given by the factory or the local committee of the trade union concerned.<sup>16</sup>

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<sup>14</sup>Soviet Constitution of 1936.

<sup>15</sup>Yearbook on Human Rights for 1946, p. 312

<sup>16</sup>"Soviet Constitution Gives People a Vivid Charter of Freedom," U.S.S.R. Information Bulletin, IX (December 9, 1949), p. 719.

The Soviet Constitution provides for free education for all.

Article 121.--Citizens of the U.S.S.R. have the right to education.<sup>17</sup>

This article guarantees the right to education to all citizens by providing sufficient elementary, seven-year, secondary and specialized secondary schools, and higher educational facilities which conduct teaching in the native language. Vocational and evening schools have been set up to meet the needs of labor, business and industry.<sup>18</sup>

Equal rights of men and women are recognized by the Soviet Constitution.

Article 122.--Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, government, cultural, political and other public activity.

The possibility of exercising these rights is ensured by women being accorded an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, state aid to mothers of large families and unmarried mothers, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.<sup>19</sup>

In a speech on International Working Women's Day, Lenin stated that "not a single bourgeois State, not even the most progressive, republican, democratic State, has brought about

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<sup>17</sup>Soviet Constitution of 1936.

<sup>18</sup>U.S.S.R. Information Bulletin, p. 720.

<sup>19</sup>Soviet Constitution of 1936.

the complete equality of rights." He declared that the Soviet Republic of Russia has secured in its laws the equality of women. Since culture is measured by the legal status of women, only the socialist state has achieved the highest level of culture.<sup>20</sup>

Equality of rights of citizens of the U.S.S.R. irrespective of their nationality or race is set forth in the 1936 Constitution in all spheres of governmental, economic, cultural, political and other public activity.<sup>21</sup>

Article 123.--Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race in all spheres of economic, government, cultural, political and other public activity, is an infeasible law.

Any direct or indirect restriction of the rights of, or, conversely, the establishment of any direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.<sup>22</sup>

In the "Decree of the Council of the People's Commissars of the U.S.S.R. on the Extirpation of the Anti-semitic Movement," is stated that the anti-semitic movements must be combated by the Russian people. V. M. Molotov, in his book, The Constitution of Socialism,<sup>23</sup> quoted Stalin as saying:

Anti-semitism, as an extreme form of racial chauvinism, is the most dangerous survival

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<sup>20</sup>Yearbook on Human Rights for 1946, p. 314.

<sup>21</sup>U.S.S.R. Information Bulletin, p. 720.

<sup>22</sup>Soviet Constitution of 1936.



of cannibalism . . . . In the U.S.S.R. anti-semitism is strictly prosecuted as a phenomenon profoundly hostile to the Soviet System.<sup>23</sup>

Freedom of conscience is guaranteed in the U.S.S.R.

Article 125.--In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens.<sup>24</sup>

Lenin stated in his book, Socialism and Religion, that the State must not concern itself with religion. He argued that everyone must be absolutely free in all religious matters and that religious discrimination must not be tolerated.<sup>25</sup>

The Soviet Constitution guarantees freedom of speech, the press, assembly, mass meetings, street processions and demonstrations.

Article 125.--In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R. are guaranteed by law:

- (a) freedom of speech;
- (b) freedom of the press;
- (c) freedom of assembly, including the holding of mass meetings;
- (d) freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working people and their organizations printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites for the exercise of these rights.<sup>26</sup>

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<sup>23</sup>Yearbook On Human Rights for 1946, p. 314.

<sup>24</sup>Soviet Constitution of 1936.

<sup>25</sup>Yearbook On Human Rights for 1946, p. 315.

<sup>26</sup>Soviet Constitution of 1936.

C. Human Rights in Russia; Actual Practice.

In actual practice, printing offices of any kind, governed by the Soviet Law of 1932 which is still in effect, "may be opened only by government agencies, co-operatives, and public organizations." The organization, "Glavlit," is a permanently functioning unit to carry on censorship. It was established "for the carrying out of all kinds of political and ideological, military and economic control of printed matters, manuscripts, photographs, pictures, etc., destined for publication or circulation, and of radio messages, lectures, and exhibitions."<sup>27</sup>

In Article 126, the Communist Party is declared the "vanguard" of the working people and the "leading core" of all organizations of the working people who have the right to "unite in the Communist Party of the Soviet Union" in their "struggle to strengthen and develop the socialist system."<sup>28</sup> In reality, this places the facilities for the exercise of the freedoms in the hands of the government and the Communist Party.<sup>29</sup> Inviolability of person is guaranteed in Article 127 of the Soviet Constitution, but it also permits arrest, not only by court decision but also by "sanction of a procurator" or government attorney.<sup>30</sup>

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<sup>27</sup> Gsovski, op. cit., pp. 64-65.

<sup>28</sup> Soviet Constitution of 1936.

<sup>29</sup> Gsovski, op. cit., pp. 64-66.

<sup>30</sup> Ibid.

The electoral system is described in Chapter XI of the Soviet Constitution. Article 135 provides for universal suffrage:

. . . . all citizens of the U.S.S.R. who have reached the age of eighteen, irrespective of race or nationality, sex, religion, education, domicile, social origin, property status or past activities, have the right to vote in the election of deputies, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights.<sup>31</sup>

After reading the constitutional provisions for the new electoral system in the Soviet, one might think it is one of the most democratic in the world. The error would be in not remembering that there is a total absence of anything like the multi-party system of the Western powers and that the Communist Party exercises unfailing restrictive powers through its agents and members in every part of the country. Candidates would not get far and in most cases would not be permitted to run for office without approval by the local party organization.<sup>32</sup> The fact that nearly one hundred percent of the eligible voters turn out at election time is due to the Soviet Union's making the obligation of voting so urgent that few people have the courage to stay away from the polls.<sup>33</sup>

Actually, the right to rest and leisure means little as "ensured by the establishment of an eight-hour day for factory

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<sup>31</sup>Soviet Constitution of 1936.

<sup>32</sup>Frederic A. Ogg and Harold Zink, Modern Foreign Governments, (New York: The Macmillan Company, 1949), pp. 832-833.

<sup>33</sup>Ibid., p. 831.

and office workers, . . . seven or six hours for arduous trades and four hours in shops where conditions of work are particularly arduous" and by "annual vacations with full pay for salaried employees and wage earners." The Edict of the Presidium of June 26, 1940, changed the normal working day to eight hours. The collective farmers who were not employees but who made up a large per cent of the population were not allowed vacations in the first place. During the war, vacations were abolished for all, and over-time was made mandatory.<sup>34</sup>

"The right to maintenance in old age and also in case of sickness or disability," also applies only to employees and not to anyone else, such as collective farmers.<sup>35</sup> The right to free education as set up in Article 121, was changed in 1940 by the Council of People's Commissars by enacting a tuition fee for the higher grades of secondary schools and for higher education. This was incorporated in the form of a constitutional amendment on February 25, 1947.<sup>36</sup>

The classless society as described in the 1936 Constitution is a thing of theory only. Today, workers are paid partly according to how much they turn out in a day, and the managers are paid extra because of their responsibilities. It was found that when all workers were paid equally, regardless of how hard

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<sup>34</sup>Gsovski, op. cit., p. 67.

<sup>35</sup>Schlesinger, op. cit., p. 223.

<sup>36</sup>Gsovski, op. cit., p. 74.

they worked, there was considerable soldiering on the job, and little was done to increase production. This was true in the factories as well as on the collective farms. The extra compensation received by the managerial class and the privileges available to that class make the gap between the favored few and the masses just as great as in capitalistic countries.<sup>37</sup>

The Soviet atheistic regime is now helping the Russian Orthodox Church to regain the position it held before being stripped of its power by the Bolsheviki, while at the same time combatting religion as the opium of the people. The Church can now count on this quiet support from the Kremlin in exchange for unofficial services.<sup>38</sup>

Anti-semitism in Russia is approaching heights comparable to that in Germany in the days of Adolph Hitler. In the fall of 1948 at the Moscow Jewish synagogue, crowds of Jews gathered to celebrate Rosh Hashonah, the Jewish New Year. The occasion was stimulated by the presence of the new Israel Legation headed by Mrs. Golda Myerson. Feeling ran so high that Jewish men and women alike broke out in tears and cheered and cried aloud: "We have waited all our lives for this! For Israel! Tomorrow to Jerusalem!"

The demonstration continued long after the religious service ended, and was repeated a week later on Yom Kippur, the

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<sup>37</sup> Ogg and Zink, op. cit., p. 852

<sup>38</sup> Joseph Newman, Report from Russia, UNCENSORED. (New York: New York Herald Tribune, Inc., 1950), p. 29.

Day of Atonement. The Russian Jews, in publicly proclaiming their desire to go to Palestine, were guilty in the eyes of the Kremlin of being disloyal to the Soviet regime and the Soviet state, a crime related to treason.<sup>39</sup>

The Soviet leaders claim that a citizen can owe allegiance to only one state and cannot change citizenship or allegiance with impunity. The leaders of this Jewish demonstration and those belonging to their faith were soon punished. The 3,000,000 Jews were notified that they would not be allowed to leave Russia and go to Israel. The leaders of the Jews were rounded up and imprisoned. A reign of terror was directed against all people of the Jewish faith. The only two Yiddish language printing plants in Moscow were raided and liquidated. Offices of the Jewish Anti-Fascist Committee were closed. Three organizations which had Jewish employees were suddenly closed without warning. The Israeli Legation was isolated from all outside contact so that Jews could not apply for visas.<sup>40</sup>

All of this took place without any official notice; no charges; no trial. All of this was just further evidence to the world of the non-existence in the Soviet Union of press freedom, the right of assembly, due process of law and justice.

The last move to suppress the flames of freedom and nationalism encouraged by the creation of the new state of Israel, was a nationwide press campaign directed against Jews and

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<sup>39</sup>Ibid., pp. 19-20.

<sup>40</sup>Ibid.

Zionists. The campaign became so brutal that it was difficult for one to tell whether it was being directed against the Jews because of their being Jews or because of their Zionism. Jews in all fields of intellectual life - science, education, literature, theater, cinema, music, art - were publicly denounced as "homeless cosmopolitans." The Press no longer tried to hide its feeling on this matter of racial discrimination. Jews were ridiculed for believing in Jehovah and for studying the Talmud. All of this action was taken in such a way that there was little doubt that it was being directed by the Politburo itself.<sup>41</sup>

An unusual feature of the 1936 Constitution is its mention of some specific duties of the citizens. In Article 12 is stated the duty to work according to the principle: "He who does not work, neither shall he eat." In Article 130 is stipulated the duty "to observe the laws, to maintain labor discipline, honestly to perform public duties and the rules of socialist community life." The duty "to safeguard and fortify public, socialist property" is set forth in Article 131, and those who do not do this are declared public enemies. Article 132 contains the universal military service clause, which is followed by an article that proclaims treason to the motherland is punishable "with all severity of the law as the most heinous of crimes."<sup>42</sup>

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<sup>41</sup>Joseph Newman, op. cit., pp. 19-22.

<sup>42</sup>Gsovski, op. cit., pp. 68-69.



The Civil Code of Russia which is supposed to support the Constitution was born with the appearance of the Decree of May 22, 1922, which was entitled: "On Fundamental Private Property Rights Recognized by the Russian Soviet Republic, Secured by Its Law, and Protected by Its Courts." The Code, which was written in four months, has been modified and restricted several times since it was written, and especially by the 1936 Constitution. The framers of the Civil Code borrowed extensively from capitalist codes, but added clauses which explained the conditions under which rights would be protected. Sections 1 and 4 of the Code defined the status of private rights and provided the restrictions necessary under the socialist doctrine.

Section 1 reads:

The law protects private rights except as they are exercised in contradiction to their social and economic purpose.

Section 4 reads:

For the purpose of development of the productive forces of the country, the R.S.F.S.R. has granted legal capacity (the capacity of having private rights and obligations) to all citizens who are not restricted in their rights by sentence of court.<sup>43</sup>

A Soviet jurist, Malitsky, who was a professor of law and editor of a commentary on the Civil Code which went through three editions before 1927, made the following comment on Sections 1 and 4 of the Civil Code:

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<sup>43</sup>Ibid., p. 315.

The government has granted rights to citizens not in the name of abstract rights of man . . . . but exclusively for its own purpose. This purpose is the development of the productive forces of the country.

Rights as a social function, private right as a social duty, subordination of the private interest to the common, and coordination of private purposes with those of society - this is the purpose of private rights and the essence of their grant to private persons . . . . the proletariat bestowed rights upon the citizens of its State, but set for each person limits to private liberty to be observed in the exercise of private initiative. Private persons must not go beyond the limits established by law. Here lies a basic difference between our law and capitalist law. The capitalist law is based upon the abstract "natural rights" of a person; it places the person in the center of the world and surrounds him with a cult and therefore establishes the limits of the State . . . . however the proletarian State set the limits not to itself but to its citizens.<sup>44</sup>

In summary, a quotation from the Russia Law Digest, 1947, perhaps best described individual rights as they are actually regarded in the Soviet Union today.

No right may be exercised to the detriment of Soviet Socialism as interpreted by courts and administrative tribunals. The press is subject to strict control and supervision to assure its fidelity to Soviet political principles. Freedom of speech and press means freedom to criticize administrative failures and to offer interpretations of desirable future activity. It does not extend to criticism of basic political programs. By special Act, a Committee within the Ministry of Interior may arrest, imprison or deport persons deemed politically dangerous. Only a single political party is permitted, the All-Union Communist Party which is charged with the duty of political leadership.<sup>45</sup>

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<sup>44</sup>Ibid., p. 319.

<sup>45</sup>John N. Hazard, Russia Law Digest, (Martindale-Hubbell, Inc., 1947), p. 4.

D. Human Rights Guaranteed in the United States Constitution.

The framers of the Constitution of the United States at first did not plan to include a formal bill of rights. They felt that the bills of rights in the state constitutions would protect civil liberty against state infringement, and the national government would need not be so restricted because the Constitution did not give it power to infringe on civil liberties in the first place.

The men responsible for the Constitution soon saw that in order to get it ratified, a federal bill of rights would have to be added. In 1791, ten amendments were adopted which were considered a bill of rights and a part of the original Constitution. As history has shown, the purpose of the federal bill of rights was to protect civil liberty from intrusions by the federal government, and was not to apply to the states. In 1833, the Supreme Court established as a rule of law that the federal bill of rights did not apply to the states. For seventy-five years the federal Constitution had little to do with the protection of civil liberties of the American people.<sup>46</sup>

After the Civil War, three important amendments were added to the Constitution. Slavery and involuntary servitude were forbidden in the Thirteenth Amendment (1865). The broad base of American citizenship was enlarged by the Fourteenth Amendment (1868). The states were forbidden to abridge the privileges and immunities of American citizenship and deny due pro-

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<sup>46</sup>Yearbook On Human Rights for 1946, p. 323.

cess of law or the equal protection of the laws to any persons. Racial discrimination in regard to the right to vote was forbidden by the Fifteenth Amendment (1870).<sup>47</sup> The intent behind these new amendments, particularly the Fourteenth, was a "nationalization of civil liberties," whereby states would be brought under federal jurisdiction in respect to their treatment of their own citizens.<sup>48</sup>

In 1925, the Supreme Court began to make parts of the federal bill of rights applicable to the states. The Court declared:

For present purposes we may and do assume that freedom of speech and of the press - which are protected by the First Amendment from abridgment by Congress - are among the fundamental personal rights and liberties protected by the "due process" clause of the Fourteenth Amendment from impairment by the states.<sup>49</sup>

In later years the Supreme Court has passed down decisions which have brought the four fundamental freedoms protected by the First Amendment - freedom of religion, speech, press and assembly - under the "due process" clause of the Fourteenth Amendment. Only these four mentioned freedoms have been given protection under the term "liberty" in the Fourteenth Amendment, as they are regarded as "of the very essence of a scheme of

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<sup>47</sup>Ibid.

<sup>48</sup>Ibid., p. 324.

<sup>49</sup>Ibid.

ordered liberty." Other mentioned freedoms in the federal bill of rights are not considered indispensable to "a fair and enlightened system of justice," and the states may deal with them as they wish.<sup>50</sup>

Under the American Constitution, the federal bill of rights guarantees protection to all persons in this country and not just to its citizens. Corporations are considered as persons and not as citizens under the Constitution and are protected as such. The "due process of law" clause in the Fourteenth Amendment may apply differently to aliens than to citizens, but in general the government has extended protection and privileges to aliens of this country which could be withheld if it so desired.<sup>51</sup>

The liberties of the individual are protected against infringement from the national government by the limits of the federal bill of rights and from the states by the Fourteenth Amendment. The Courts have the power to enforce these limitations and may give relief to an individual who has had his rights violated.<sup>52</sup>

The civil liberties protected in the American Constitution fall into five groups. The first group includes the guarantees of freedom of religion, press, speech, assembly and petition which are incorporated in the First Amendment. These rights

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<sup>50</sup>Ibid.

<sup>51</sup>Ibid., p. 324.

<sup>52</sup>Ibid.

have been given a preferred status by the Supreme Court as being essential to the democratic process. They may not be abridged by either the federal or state governments.<sup>53</sup>

First Amendment. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.<sup>54</sup>

In the second group are those guarantees against executive and military encroachment upon personal rights. These rights include the right to bear arms and to be protected from the quartering of troops; to protection against unreasonable searches and seizures; to protection under the writ of habeas corpus and against martial law.<sup>55</sup>

Second Amendment. A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Third Amendment. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.<sup>56</sup>

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<sup>53</sup>Ibid., p. 325.

<sup>54</sup>The United States Constitution, Article I.

<sup>55</sup>Yearbook On Human Rights for 1946, p. 325.

<sup>56</sup>The United States Constitution, Articles II, II, and IV.

The third group takes in those provisions which protect a person accused of crime. These protections are not binding on the states, but the "due process" clause of the Fourteenth Amendment does require that the federal and state governments treat any accused person with essential fairness.<sup>57</sup>

Fifth Amendment. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sixth Amendment. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defense.<sup>58</sup>

Protection of property rights is found in the fourth group. Property taken by eminent domain must be acquired by just compensation. Arbitrary invasion of a person's property rights is protected by due process of law. The obligation of

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<sup>57</sup>Yearbook On Human Rights for 1946, p. 325.

<sup>58</sup>The United States Constitution, Articles V and VI.



contracts may not be impaired by any laws passed by the states.<sup>59</sup>

Article I, Section 10, (1) No state shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Seventh Amendment. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, according to the rules of the common law.<sup>60</sup>

In the last group, arbitrary discrimination against individuals and groups is prohibited by both the federal and state governments. The "due process" clause of the Fifth Amendment restrains the federal government, and the states are required in the Fourteenth Amendment to provide "equal protection of the laws."

Thirteenth Amendment. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Fourteenth Amendment. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

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<sup>59</sup>Yearbook on Human Rights for 1946, p. 325.

<sup>60</sup>The United States Constitution, Article VII.

nor deny to any person within its jurisdiction the equal protection of the laws.

Fifteenth Amendment. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.<sup>61</sup>

The discrimination against the American Negro has been of prime concern of jurists and lawmakers. It was felt by the framers of the Fourteenth Amendment that they had provided for and guaranteed equality of treatment, both governmental and private, to the Negro.<sup>62</sup> As it has worked out, this has not been true. Private racial discrimination continues and is only under the jurisdiction of prevailing state laws. The Supreme Court has ruled that equal protection of the laws exists even where there is segregation of Negroes and whites, in the enjoyment of public services and accommodations; however, this has been far from realized. In most states, however, the courts have tried to provide equality for Negroes in the ownership and occupation of property.<sup>63</sup>

The rights of a person in the United States can be described in different ways. They have been provided for and guaranteed in the American Constitution under different headings, amendments and judicial decisions. The most recent formulation of the essential rights of a citizen in the United States has

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<sup>61</sup>The United States Constitution, Articles XIII, XIV and XV.

<sup>62</sup>Yearbook on Human Rights for 1946, p. 325.

<sup>63</sup>Ibid., p. 326.

come to be known as the Four Freedoms: (1) The right to safety and security of the person; (2) The right to citizenship and its privileges; (3) The right to freedom of conscience and expression; and (4) The right to equality of opportunity.<sup>64</sup>

E. Human Rights in the United States; Actual Practice.

The record shows that in American history there has been a considerable gulf at various times between ideals and practice. There still remains today ideological remnants of such things as human slavery, religious persecution, mob rule, racial prejudice, etc., in the practices of some of the American people. There is a great amount of shocking evidence of recent violations of the essential rights of some of the American citizens.<sup>65</sup>

The incidents and violations which will be cited here come from "The Report of the President's Committee on Civil Rights, 1947," which is perhaps the best, most recent study on civil liberties in America. This brief discussion is not meant to resemble in any way a survey or study of the civil rights problem in America, but is just intended to show that some of the freedoms and rights provided for under the American Constitution are still being denied to certain American citizens.

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<sup>64</sup>The Report of the President's Committee on Civil Rights, To Secure These Rights, (Washington: United States Government Printing Office, 1947), pp. 6-9. Hereafter referred to as The President's Report.

<sup>65</sup>Ibid., pp. 9-10.

"The right to safety and security of the person" is the right of every individual to physical freedom, to security against violence, and to just, orderly legal process. This right is enjoyed by most Americans, but there are many who still fear mob violence, entanglement with the law and various forms of involuntary servitude.<sup>66</sup>

At least six persons were lynched by mobs in 1946, three of them had not been charged by anyone with an offense. The three that had been charged were all Negroes. One was accused of stealing a saddle, one for breaking into a house and one for stabbing a man. During this same year twenty-two other people, all Negroes but one, were saved from mob violence. Although statistics show that lynchings have decreased from year to year, the outstanding threat to civil rights in America is still lynching. In some sections of the country mobs can still abduct and murder a man with little fear of the law.<sup>67</sup>

In many parts of the country, the police force does not protect equally the rights of the people. This is often due to the untrained and low-caliber officers who do not know or care about the limits of their authority. Breaches of civil rights of this nature usually come in the form of unwarranted arrests, prolonged detention of victims and abuse of the search and seizure power. Most of the victims are ignorant, friendless persons who are unaware of their rights and who do not possess

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<sup>66</sup>Ibid., pp. 20-23.

<sup>67</sup>Ibid.

the means to challenge the violators. Depending on the section of the country, dominance of local groups and lawlessness of the police force, the brunt of illegal police activity may be brought to bear on vagrants, union organizers, or on unpopular racial or religious minorities.<sup>68</sup>

The files of the Department of Justice are filled with many cases on brutal treatment of juveniles in reform schools, inmates in prisons, and suspects in jails. There is considerable evidence of illegal official action in southern states. J. Edgar Hoover referred to a particular jail in the South where "it was seldom that a Negro man or woman was incarcerated who was not given a severe beating, which started off with a pistol whipping and ended with a rubber hose."<sup>69</sup>

The judicial process does not give American citizens from minority groups full and equal justice. Violations of this type usually take the form of unjust trials, convictions on third-degree confessions, or heavier fines and prison sentences than those given to other members of the community for like offenses. The low incomes of most Negroes, Mexicans and Indians often keep them from securing competent counsel to defend their rights when in trouble, or from posting bail or bond in order to secure release from jail during trial.

The jury system does not always protect the rights of the minority members because of the absence of people of their own

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<sup>68</sup>Ibid., pp. 25-26.

<sup>69</sup>Ibid.

kind from the jury lists. In many sections of the country, Negroes and Mexicans are never called for jury duty. This distrust of the legal machinery by minority groups has caused them to often harbor and protect any member of their group accused of crime.<sup>70</sup>

Although slavery was abolished nearly a century ago, involuntary servitude still exists in some forms. The danger remains in areas where large numbers of people are frightened, uneducated and underprivileged. In some areas of the country today, it is the practice for sheriffs to release prisoners into the custody of persons who will pay their fines or post their bonds. The "benefactors" then have the prisoners work for them under the threat of returning to jail. Often times the original charge has been trumped up in order to secure labor by this means. In some southern states, employers may force employees who are in debt to them to continue to work for them under the threat of criminal punishment.<sup>71</sup>

The evacuation and exclusion of the Japanese from the West coast during the war is the most outstanding mass interference since slavery with the right to physical freedom. These people, some 110,000 men, women and children, two-thirds of whom were United States citizens, were ordered out of the West coast area and were sent to "relocation centers." This was done without a trial or any sort of hearing at the direc-

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<sup>70</sup>Ibid., pp. 27-29.

<sup>71</sup>Ibid., p. 30.

tion of the Commanding General of the West Coast Command, who acted under an Executive order. The reason given for this mass evacuation was that the military security of the nation depended on the exclusion of any potentially disloyal people from the coastal area.

Through no fault of their own, hundreds of these evacuees suffered serious property and business losses because of this action. It should be noted that fundamentally the American system of law operates on the theory that guilt is personal and not a matter of hereditary or association. In this case there were no specific evacuees charged with disloyalty, espionage or sedition. The implications of this episode are disturbing as to the future of American individual rights.<sup>72</sup>

"The right to citizenship and its privileges" is necessary for the full participation in the political process in the United States. Only citizens are allowed to vote, and to hold public office. Naturally, those barred from citizenship are excluded from much of the economic and social advancement open to American citizens. The Constitution states that all persons born in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. The Constitution set an ideal of native citizenship by which all persons born in this country, regardless of race, color, creed or ancestry, would become citizens of the United States.<sup>73</sup>

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<sup>72</sup>Ibid., pp. 30-31.

<sup>73</sup>Ibid., pp. 32-33.



It is only reasonable that a democracy would establish adequate tests to determine the eligibility of an alien for citizenship, but some of the standards in the naturalization laws of the United States have no bearing on a person's fitness for citizenship. These standards, which are based solely on race or national origin, exclude some people from citizenship who may otherwise have the necessary qualifications for good American citizenship. The Japanese are the largest group subject to this kind of discrimination. Ineligible aliens suffer at the hands of private citizens in the matter of employment, housing, etc., but many states bar land ownership to ineligible aliens. California does not allow ineligible aliens to engage in commercial fishing or receive equal benefits of old age pensions. Some states allow only citizens to enter the law, medical, teaching and other professions. Discrimination of this kind impairs an alien's economic opportunities.<sup>74</sup>

Most adult Americans feel that suffrage is actually universal. According to the law this is true, but in practice, the right to vote is not assured to every qualified citizen. Some are refused the franchise because of race; others because of institutional or electoral procedures which prevent free access to the polls; and still others lose the franchise whenever electoral irregularities occur that outlaw their votes. Citizens who do not enjoy the franchise are limited in their

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<sup>74</sup>Ibid.

efforts to seek office or influence the operation of the government.<sup>75</sup>

Until recent years, the Negroes in the Southern states found it almost impossible to vote. When legal methods to disfranchise the Negroes were held unconstitutional, other ways were improvised. Intimidation is still perhaps the strongest threat which makes sure that the desired result is achieved.

Until 1944, the white primary was used in many Southern states to exclude the Negro voter. In 1944, the United States Supreme Court ruled in the case of *Smith v. Allwright* that the Texas white primary was unconstitutional. This ruling has been applied to other states since then, but other methods have been found to guarantee white supremacy. One method has been to make the Negro pass a qualification test such as reading and explaining certain provisions of the constitution. The poll tax is another method which has been very effective in eliminating the Negro voter. The poll tax is simply a fee placed between the voter and the ballot box. The American Indian is disfranchised in New Mexico and Arizona on the grounds that he does not bear equal burdens with other citizens.<sup>76</sup>

During World War II, as well as in past wars, there was open discrimination against members of minority groups in the armed services. Since the war all the armed forces have adopted policies which are supposed to achieve equality of opportunity

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<sup>75</sup>Ibid., p. 35.

<sup>76</sup>Ibid., pp. 40-41.

for all servicemen. However, the Marine Corps still will not take Negroes except as stewards, and the Army will not accept more than ten percent of their total strength.<sup>77</sup>

"The right to freedom of conscience and expression" is necessary for free men to learn the truth about competing ideas, and to enjoy the wisdom that comes from full and fair presentation of differing opinions. This right also allows a man to select the religious and political beliefs which fit his private needs without fear of outside influence.

Even though most Americans do worship as they please, and the press is freer from government controls than any in the world, and American citizens are normally free to speak and assemble for public discussions, there are still frequent outbreaks against unpopular religious, political, and economic groups. Our federal court has received a steady flow of cases in recent years involving groups like the Jehovah's Witnesses.<sup>78</sup>

The right to freedom of opinion and expression is being threatened indirectly at present to certain political groups such as the Communists and Fascists. It is only natural that Americans would want to suppress these groups, but it is also contrary to the American heritage to impose directly or indirectly special limitations on these groups as to their rights to speak and assemble.<sup>79</sup>

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<sup>77</sup>Ibid.

<sup>78</sup>Ibid., pp. 47-48.

<sup>79</sup>Ibid.

"The right to equality of opportunity" is essential to a man in his efforts to utilize fully his skills and knowledge. During the war there was a marked improvement in the hiring policies and the removal of discriminatory practices in private business, in government, and in labor unions. However, discrimination still remains in employment practices. The Fair Employment Practice Committee established by President Roosevelt in 1941, reported that four out of five cases referred to it concerned Negroes; eight percent of the cases had to do with complaints of discrimination because of creed with seventy percent of these being Jews. Groups such as the Japanese Americans, Jews, Mexican Americans and American Indians have long been the object of employment discrimination.<sup>80</sup>

The minority job seeker, regardless of his qualifications, often is not allowed to apply for a job. When he does get himself hired, he finds that he usually has to work for less or work longer hours than other workers. Discriminatory practices of some companies allow minority workers to take only low-paying jobs such as common labor and domestic service.<sup>81</sup>

The United States has gone far in providing universal education for all its people. However, prejudice and discrimination still exist in the operation of public and private schools. Equality of educational opportunities has not been provided for Negroes and, to a lesser extent, other minority

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<sup>80</sup>Ibid., pp. 55-57.

<sup>81</sup>Ibid.

groups, in the public elementary and secondary schools. There still exists discrimination in the private institutions of higher learning, particularly to Jewish students in the North.<sup>82</sup>

The equality of opportunity to rent or buy a home does not prevail alike to all citizens. Minority groups face first a general housing shortage, and then prejudice and discrimination based upon race, color, religion or national origin. This is a direct disadvantage to them in the competition for the available housing.<sup>83</sup>

Many segments of the American population are not allowed equal opportunity of available medical care, and consequently do not measure up to the universal health standards. The death rate from all causes for the entire country in 1945 was 10.5 per thousand. However, the Chinese had a rate of 12.8; the Negroes, 12.0; the Indians, 12.0; and the Japanese, 11.5. Twice as many Negroes and ten times as many Indians as whites die of tuberculosis.<sup>84</sup>

It is a well known fact that many of the public services supplied by both the government and private business, are not equally accessible to all persons. The old age insurance and unemployment compensation does not cover agriculture, domestic service, and self-employed persons. Sixty-five percent of all Negro workers and large numbers of Mexican, Japanese and Hispanic Americans fall into these categories. Local administrators often

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<sup>82</sup>Ibid., p. 63.

<sup>83</sup>Ibid., p. 67.

<sup>84</sup>Ibid., p. 71.

discriminate against members of minority groups when they apply for the benefits of the program.<sup>85</sup>

Discrimination becomes more pronounced in the public services supplied by private enterprise. Some Americans, because of race, color or creed, are prevented from entering certain places and are given unequal service in others.

It has been left up to the states to decide on segregation. Some states have outlawed it, some have compelled it and some have left it up to the managers of the private establishments to decide for themselves what to do about it. In the twenty states that do compel segregation in one form or another, Negroes are usually separated from the whites in public conveyances, in hotels and restaurants, in depots and waiting rooms, and in places of amusement. Mexicans are barred in the Southwest from cafes, beer parlors, barber shops and places of recreation. Some resorts in the North refuse admission to Jews. Indians and Japanese often find difficulty in getting service and hotel accommodations in some parts of the country.<sup>86</sup>

The United States without doubt has offered more hope and encouragement for the final realization of freedom and equality for all its people than any other nation in the world. Certain signs indicate that it is likely that much more progress will be made in the near future.

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<sup>85</sup>Ibid., p. 75.

<sup>86</sup>Ibid., pp. 76-78

The greatest hope lies in the increasing awareness by more and more Americans of the difference between the civil rights principles and actual practices. Civil rights have been strengthened over past years by the effective work of many of the leaders of public opinion. Many private and community organizations have been established to improve relations among their people and to protect the rights of the minorities. The existence of these organizations is a sign of a healthy democracy which is devising ways for self-help.<sup>87</sup>

Some of the states, such as New York, have passed impressive civil rights laws in recent years. The movement of Negroes into the ranks of organized labor is a big boost for the Negro cause. It is also a hopeful sign when cities like Trenton and Gary have ended segregation in the schools, and when hospitals in cities like St. Louis and Gary have opened their doors to Negro doctors. Important also is the fact that Negroes have now entered Major League baseball, and are being hired as police officers in most cities of any size to take care of Negro law-breakers. There has been a steady decline in the number of lynchings in the past two decades. From a high point of sixty-four lynchings in 1921, the figure has fallen to six in 1940, and the annual figure has never gone beyond that since 1940.<sup>88</sup> A more recent happening is the banning by the Supreme Court of

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<sup>87</sup>Ibid., p. 17.

<sup>88</sup>Ibid., pp. 18-20.



segregation in the graduate schools of Oklahoma and Texas (June 5, 1950).<sup>89</sup>

Regardless of constitutional guarantees and court decisions in respect to human freedoms, their enforcement depends in the final analysis upon the public opinion of a nation, a state, or local community. Liberties will be protected and guaranteed in the same proportion as the values placed thereon.<sup>90</sup>

It is interesting to note that many of the same rights are granted in both the Soviet and the United States constitutions, but the difference of interpretation leads to different effectuations of these same rights. This is caused by the fact that contrary to that of the United States, under the Soviet system duty and loyalty to the state is an obligation which transcends any employment of rights by individual citizens.

It can be seen that there is a great difference between the theoretical principles and actual practices in the fulfillment and realization of human rights in the Soviet Union and in the United States. This unwillingness on the part of Russia and the United States to safeguard completely the rights of individuals within their jurisdiction is very significant, because it indicates how far each nation would be willing to go in securing and providing for the rights of people in other parts of the world.

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<sup>89</sup>McLaurin v. Oklahoma State Regents for Higher Education, et al, 34 U.S. (1950).

<sup>90</sup>Yearbook On Human Rights for 1946, p. 326.

## CHAPTER III

## DRAFTING OF THE INTERNATIONAL BILL OF HUMAN RIGHTS

A. Introduction

The Second World War made clear to people all over the world the need for asserting and safeguarding human rights. The people in every country had had to share hardships and work together to win the war. This made them more aware of the partnership of the human race. It was a shocking realization for them to see millions of people dragged from their homes, degraded, tortured and killed, and lose all human rights whatsoever. It became evident to them that the denial of these rights was a basic cause of war.<sup>1</sup>

It was quite natural that the Atlantic Charter should call for a peace in which human rights would be restored and extended, and that the Dumbarton Oaks proposals should include the phrase ". . . to promote respect for human rights and fundamental freedoms." The representatives at the United Nations convention at San Francisco in 1945 received thousands of letters urging them to give full consideration to this problem. It is interesting to note that human rights are mentioned in the preamble and in six different articles of the United Nations Charter.<sup>2</sup>

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<sup>1</sup>United Nations, Our Rights As Human Beings, (Lake Success; United Nations Publications, 1949), p. 14.

<sup>2</sup>Ibid.

Representatives of most of the nations of the world have agreed for the first time that human beings everywhere are entitled to certain rights because they are human beings, and not because they belong or do not belong to a certain group or nation. They have agreed that men and women should be considered on their merits and be given a chance to live a full and happy life.<sup>3</sup> It is impossible for man's conscience to operate adequately in criticising or commending national or international policies when human rights are denied. Every political situation which faces the world today is penetrated and underlaid by the issues of human rights.<sup>4</sup> The United Nations, feeling the need for international agreement on basic rights and freedoms, decided to draft an international bill of rights which would guarantee to everyone, everywhere, the fundamental human rights.<sup>5</sup>

#### B. The Drafting of the International Declaration of Human Rights

The Preparatory Commission of the United Nations, created on June 26, 1945 (the day the U. N. Charter was signed), had the responsibility of arranging for the first regular session of the General Assembly, and for organizing the principal organs of the United Nations. It recommended to the Economic

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<sup>3</sup>Ibid., pp. 18-19.

<sup>4</sup>0. Frederick Nolde, "The Universal Declaration of Human Rights," We, the People, and Human Rights, Compiled by Marion V. Royce and Wesley F. Rennie, (New York: Association Press, 1949), p. 27.

<sup>5</sup>Our Rights As Human Beings, p. 14.

and Social Council that it should establish at its first meeting a Commission on Human Rights, and then defined in general terms the functions and purposes of the Commission.<sup>6</sup>

The Economic and Social Council, at its first meeting, did set up a Commission on Human Rights by a resolution passed on February 16, 1946. This nuclear Commission was made up of nine members, appointed in their individual capacities by the Economic and Social Council. The United States representative, Mrs. Eleanor Roosevelt, was made Chairman; M. Rene Cassin of France was chosen Vice-Chairman; and Mr. K. C. Neogy of India was selected as Rapporteur of the nuclear Commission.<sup>7</sup>

The Commission was instructed to submit:

. . . . proposals, recommendations, and reports regarding an international Bill of Rights; international declarations or conventions on civil liberties, freedom of information and similar matters; the protection of minorities; the prevention of discrimination on grounds of race, sex, language, or religion; and other matters concerning human rights.<sup>8</sup>

This nuclear Commission on Human Rights met for the first time at Hunter College, New York, from April 29 to May 20, 1946. It considered the matter of permanent composition of the Commission on Human Rights, and discussed other recommendations

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<sup>6</sup>Yearbook on Human Rights for 1947, Prepared by the Commission on Human Rights, (Lake Success: United Nations Publications, 1949), p. 420.

<sup>7</sup>Charles H. Malik, "The Universal Declaration of Human Rights, Its Making and Meaning," We, the People, and Human Rights, p. 14.

<sup>8</sup>Herbert V. Evatt, The Task of Nations, (New York: Duell, Sloan and Pearce, 1949), pp. III-III2.

to be made to the Economic and Social Council. It finally agreed to recommend that there should be eighteen members on the full Commission and that they should be appointed for three-year terms by the Economic and Social Council.<sup>9</sup>

The Economic and Social Council at its second session, held from May 25 to June 21, 1946, did approve of the recommendation made by the nuclear Commission that the full Commission should be made up of eighteen members and added that they should be from member states. The members would be appointed by their Governments, but would be finally confirmed by the Council.<sup>10</sup>

The Commission on Human Rights held its first regular meeting at Lake Success from January 27 to February 8, 1947. Officers of the full Commission were elected as follows: Mrs. Eleanor Roosevelt, Chairman; Dr. P. C. Chang, of China, and Professor Rene Cassin, of France, Vice-Chairmen; and Dr. Charles Malik, of Lebanon, Rapporteur. It was impossible to get down to detailed drafting because so many drafts had been submitted for consideration from many sources.

It soon became evident that this meeting of the full Commission would not be able to draft an effective bill. Mrs. Roosevelt then suggested that a smaller working group should

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<sup>9</sup>Yearbook on Human Rights for 1947, p. 421.

<sup>10</sup>Ibid., p. 422.

prepare an initial draft which would then be presented for consideration to the Commission at its second session. This plan was approved by the Economic and Social Council. The Drafting Committee was set up with representatives from eight nations: Australia, Chile, China, France, Lebanon, The Union of Soviet Socialist Republics, the United Kingdom, and the United States of America.<sup>11</sup>

The Drafting Committee met on June 9, 1947. A very detailed draft outline, prepared by Dr. John Humphrey of Canada, was submitted for consideration. This outline covered the rights in the drafts of most of the international bills of rights and the rights set forth in the constitutions of the member nations. The Committee discussed the outline and then appointed Professor Cassin, of France, to revise it and to prepare it for submission to the Human Rights Commission. It was decided that when this draft was completed it would have the form of a Declaration which would be accepted as such and would not be legally binding on the member nations of the United Nations.<sup>12</sup> The Declaration was meant to stress the worth and dignity of the human being, and to emphasize the

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<sup>11</sup>Charles H. Malik, op. cit., pp. 15-16.

<sup>12</sup>The Department of State, An International Bill of Human Rights, Publication 3055, International Organization and Conference Series III, 2, (Washington: U. S. Government Printing Office, 1948), p. 3.

fact that the rights and freedoms set forth in it were to apply to everyone alike.<sup>13</sup>

At this same meeting of the Drafting Committee, the United Kingdom filed with the Committee a proposed Covenant on human rights, which, when accepted by the member nations, would have the effect of a treaty obligation or of international law. This Covenant would be a different document entirely from a declaration, which would impose only a moral obligation on the member nations. Nations which ratified the Covenant would have to change their laws to comply with it whenever their existing laws did not adequately cover it, or were in conflict with it.<sup>14</sup>

Considerable discussion was given to these two views on the form the International Bill of Rights might take. Some members felt that the bill should be a declaration or a manifesto, while others wanted something more binding, such as a covenant. Consequently, two documents were prepared by the Drafting Committee, a draft declaration and a draft covenant. After further debating, re-drafting and discussion, these two drafts were submitted to the Human Rights Commission for consideration.<sup>15</sup>

The Human Rights Commission met for its second session at

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<sup>13</sup>"How Can An International Human Rights Treaty Be Enforced?" Reporter, Peoples Section for The United Nations, (February-March, 1950), p. 17.

<sup>14</sup>The Department of State, An International Bill of Human Rights, p. 3.

<sup>15</sup>Charles H. Malik, op. cit., pp. 16-17.



Geneva in December, 1947. At this session, an important new stage was reached in the development of the International Bill of Rights. For the first time it was conceived as a three-part document - a declaration, a covenant, and a measure of implementation. Previously the covenant and the declaration had been considered as two different ways of accomplishing the same thing. Many delegates expressed the belief that their governments would be willing to accept a draft declaration if it were to precede a covenant, but would not accept a covenant first or a declaration which would take the place of a covenant. A very thorough report on "measures of implementation" was prepared by M. F. Dehousse, of Belgium. Whenever the time comes for this phase of the bill to be put into effect, this report will be a basic source material.<sup>16</sup>

The Drafting Committee met for the second time at Lake Success from May 3 to May 21, 1948. The Committee went over the draft Declaration with great thoroughness, taking into consideration all suggestions and proposals made by various governments and other committees of the United Nations. A new draft was forwarded to the Commission, a draft which was a compromise between a tendency for over-condensation and the inclusion of many unnecessary details.<sup>17</sup>

From May 24 to June 18, 1948, the Commission on Human Rights met at Lake Success for its third session. Practically

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<sup>16</sup>Ibid., p. 18.

<sup>17</sup>Ibid.

the entire session was devoted to a very thorough re-examination of the Draft International Declaration of Human Rights. The Commission adopted the final text prepared at this session without a single dissenting vote.<sup>18</sup>

In July, 1948, the Economic and Social Council met in Geneva, and the final Draft Declaration was submitted to it for approval. The Council felt that the Draft was a good one and was ready to turn it over to the General Assembly for final action. A series of statements concerning the stand by the individual eighteen members of the Council accompanied the Draft to the General Assembly.<sup>19</sup>

The Third Committee of the General Assembly, which met in Paris in the autumn of 1948, had charge of social, humanitarian, and cultural matters. This Committee discussed the Draft Declaration for some two months in eighty-five meetings. Several sub-committees also sat twenty times in deliberations on this Draft. This set a record in the number of meetings held by any single Committee.<sup>20</sup>

The Declaration was approved by an overwhelming majority in the Third Committee on December 7, 1948. It was accepted by the General Assembly on December 10, 1948. There were some 1233 votes cast in the Committee, of which 88.98 percent were affirmative, 3.73 percent negative, and 8.19 percent abstentions.<sup>21</sup>

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<sup>18</sup>Ibid., p. 19.

<sup>19</sup>Ibid.

<sup>20</sup>Ibid., p. 20.

<sup>21</sup>Ibid.

The Declaration was accepted by forty-eight nations; two nations, Yemen and El Salvador, were absent when the voting took place; and eight nations abstained from voting. These eight nations were: U.S.S.R., Poland, Czechoslovakia, Byelorussia, Ukraine, Yugoslavia, Saudi Arabia, and South Africa.<sup>22</sup>

### C. Contents of the Draft Declaration

A look at the contents of the International Declaration of Human Rights will reveal that it sums up the civil, political and religious liberties that men have struggled for throughout the centuries. However, it also includes new economic and social rights which have only been recognized in recent years. The "dignity and worth of the human person" is stressed in the Preamble with the first two Articles making clear that everyone, everywhere, is entitled to these rights and freedoms.<sup>23</sup>

The older recognized rights to life, liberty and security of person, to recognition as a person before the law, and to a fair trial, are re-stated in Articles 3 through 15. These Articles outlaw slavery, torture, and cruel, inhuman or degrading punishments, arbitrary arrest, arbitrary interference with home, family or correspondence. Recognition is given to the right to a nationality, to freedom of movement and the right to seek asylum in another state.<sup>24</sup>

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<sup>22</sup>Eleanor Roosevelt, "Human Rights," Peace on Earth, (New York: Hermitage House, 1949), p. 66.

<sup>23</sup>Our Rights As Human Beings, p. 15.

<sup>24</sup>Ibid., p. 16.

The right of men and women to make their own choice in marriage is asserted in Article 16. The right to own property and freedom from arbitrary deprivation of it is guaranteed in Article 17. The freedom of religion, and freedom of opinion and expression come next in Articles 18 and 19. The right to peaceful assembly and association and to a share in one's country's government follow in Articles 20 and 21.<sup>25</sup>

The more recently recognized economic and social rights are set forth in Articles 22 through 26. These rights are: the right to work, to periodic holidays with pay, and to protection against unemployment, the right to choose a job and to join a trade union, the right to equal pay for equal work. The rights to an adequate standard of living, including housing, medical care, and security in case of sickness; widowhood, and old age are also guaranteed in the Declaration. The right to education is stated. Article 27 gives the right to take part in the cultural life of the community and to share in scientific benefits.<sup>26</sup>

Article 28 states that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." To attain these rights, this statement implies that there must be a suitable form of government in a peaceful family of nations.<sup>27</sup>

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<sup>25</sup>Ibid.

<sup>26</sup>Ibid.

<sup>27</sup>Ibid.

Article 29 is a reminder that "Everyone has duties to the community," because with all these rights come responsibilities and respect for the rights and freedom of others. This Article states that in the exercise of his rights and freedoms, they must be subordinated to the "just requirements of morality, public order and the general welfare in a democratic society." It also states that "these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."<sup>28</sup>

In the final Article, the Declaration stated that nothing in it "may be interpreted as implying for any State, group or person, any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."<sup>29</sup>

#### D. Russia's Objections to the Draft Declaration

It was inevitable that considerable differences of opinion would arise in the drafting of anything so broad in scope as an International Declaration of Human Rights. Different countries would naturally have different viewpoints on the matter of human rights because of their ideological backgrounds. Some countries would consider certain rights more important than others. Some countries would desire a short concise draft of fundamental rights, while other would want a more elaborate, detailed draft.<sup>30</sup>

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<sup>28</sup>Ibid.

<sup>29</sup>Ibid.

<sup>30</sup>Herbert V. Evatt, op. cit., p. 113.

Since the world is split into two armed camps today, one headed by Russia and the other by the United States, each making an all-out effort to sell the world on a political philosophy, an ideology, a way of life entirely different from the other's, it is important that a discussion should follow on the positions taken by these two powers on this problem of human rights. The world recognizes that it is within the power of these two great nations to make the United Nations fail or succeed, thus making it possible or impossible for the fulfillment and the lawful enactment of an International Bill of Rights.

The Draft Declaration of Human Rights was accepted unanimously by the United States delegation to the General Assembly in Paris. It was not accepted by Russia and the rest of the Iron Curtain countries. The reasons given by Russia for not accepting it were varied and inconsistent. The examples cited in this discussion are only a few of the objections given by Russia, but are perhaps the most important. An examination of the Draft, however, will show that many of the things that Russia claimed were left out, are actually in it.

In the first place, Russia's concept of democracy prompted her to insist that certain restrictions should be placed on the rights set forth in the Declaration. Contrary to the Western powers, she wanted to introduce certain duties of the state toward the individual.<sup>31</sup> Her delegation declared that too much

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<sup>31</sup>Ibid.

stress was put on political and civil rights and not enough on the new economic and social rights. She and her satellites would not vote for it because she declared it was an unprogressive eighteenth century document.<sup>32</sup>

At the third session of the Human Rights Commission when the Draft Declaration was revised to its final form, the Russian delegation prepared for the record a statement on their country's attitude and objections to the Declaration. To begin with, it stated that "the draft is unsatisfactory, and is not calculated to guarantee either human rights and freedoms or respect for them."<sup>33</sup> It declared further that the majority of the Commission had not seen fit to draft a document which would meet the fundamental requirements sought by the Government of the U.S.S.R. These requirements they listed as:

(a) The declaration on human rights should ensure respect for human rights and fundamental freedoms for all, without distinction as to race, nationality, social position, religion, language or sex, in accordance with the principles of democracy, national sovereignty and political independence for each State.

(b) The declaration on human rights should not only proclaim rights, but should guarantee their implementation, taking into account, of course, the economic, social and other peculiarities of each country;

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<sup>32</sup>Eleanor Roosevelt, "Human Rights," p. 67.

<sup>33</sup>"Report of the Third Session of the Commission on Human Rights," Economic and Social Council Official Records, Supplement No. 2, (Lake Success: United Nations Publications, 1948), p. 30.



(c) The declaration on human rights should define not only the rights but also the obligations of citizens towards their country, their people and their State.<sup>34</sup>

The statement pointed out what it called serious omissions and shortcomings in the declaration and the work of the Commission:

(a) The ignoring of such a fundamental requisite of democracy as the struggle against fascism and nazism . . . .

(b) The failure to enlarge the democratic rights and freedoms of the peoples and to defend some of the most important democratic principles in the declaration . . . .

(c) The limitation and restriction of a number of democratic rights and freedoms in the declaration as compared with the Geneva draft . . . .

(d) The failure, in most of the articles of the declaration, to refer to ensuring and guaranteeing the implementation of rights and freedoms . . . .

(e) The failure to include in the declaration any concrete obligations whatsoever on the part of the individual towards his native land.<sup>35</sup>

In an address given at the one hundred and eightieth meeting of the General Assembly in Paris, December 9, 1948, Mr. Vyshinsky, of Russia, pointed out more specifically why the U.S.S.R. could not accept the Draft Declaration at that time. For example, he said all Soviet attempts to change the Article which read "Everyone has the right to life, liberty and the security of person," had met with failure. He stated

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<sup>34</sup>Ibid.

<sup>35</sup>Ibid., pp. 30-31.

the Article did not go far enough and did not attempt to include measures which a government or a state must take to make these rights a reality. The proposal made by the Russian delegation read "that a state must guarantee to everyone defense from criminal attempts on his life, and conditions of life whereby threats of death from hunger or exhaustion could be taken care of by the state."<sup>36</sup>

Mr. Vyshinsky pointed out that the Article which reads:

Everyone . . . . has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

did not meet its objective. He said it was a lame article and very unsatisfactory; however, the proposal made by the Soviet delegation was rejected. This proposal read:

. . . . that the state and society, the state and the community, must take all measures, including legislative measures, to guarantee to everyone the concrete realization of the rights which are declared here.<sup>37</sup>

The third example given by Mr. Vyshinsky was Article 20 which states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive

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<sup>36</sup>Verbatim Record of the One Hundred and Eightieth Meeting of the General Assembly, Third Session, (Place of publication not given, December 9, 1948), p. 17.

<sup>37</sup>Ibid., pp. 20-21.

and impart information and ideas through any media and regardless of frontiers.<sup>38</sup>

He felt that the demands or criteria which should be met in this article were lacking. He said that the U.S.S.R. delegation did not agree with the majority that all ideas should be disseminated freely. He stated further that it was intolerable to admit the dissemination of such ideas as the ideas of fascism, ideas of racial or national hatred, ideas of hostility, and ideas of war.<sup>39</sup>

Another fault of Article 20 is that it merely declares the right to freedom, but does not say how such noble ideas could be propagated, according to Mr. Vyshinsky. He pointed out that those who would propagate noble ideas are in a position of not having the money or capital to do so. The Soviet delegation, in its efforts to correct this deficiency, was not allowed to add a few words or change the wording in any way, however.<sup>40</sup>

The fourth example of the objections given by Mr. Vyshinsky concerned the Article which read: "Everyone has the right to freedom of peaceful assembly and association." He said the U.S.S.R. delegation had pointed out previously that this Article was not sufficient, because it said nothing whatsoever about permitting street demonstrations. Because it was a well known fact that the freedom of assembly suffers in all

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<sup>38</sup>Ibid., p. 22.

<sup>39</sup>Ibid., p. 26.

<sup>40</sup>Ibid., p. 31.

lands, he said the U.S.S.R. delegation wanted to correct the Article by stating that:

. . . . in the interest of democracy and the freedom of peaceful assembly, street demonstrations should be guaranteed; also freedom of organizing trade unions, voluntary associations; but that any associations of fascists or of an anti-democratic character, as far as any activity of such a nature is concerned, should be prohibited under threat of punishment.<sup>41</sup>

The next objection cited by Mr. Vyshinsky was to Article 27 which reads:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

The U.S.S.R. delegation wanted to add just another paragraph to these wonderfully pious words which would state that "the development of science must serve the interests of progress and democracy, must serve the interests of peace and friendly relations among peoples."<sup>42</sup> However, this amendment, which was neutral, politically speaking, was also rejected.<sup>43</sup>

Another omission cited by Mr. Vyshinsky was:

. . . . the right of men, regardless of their religious, national or racial affiliations, to their own national cultures; their right to be taught in schools conducted in their own languages; the right to have their languages appear in courts, in community life and elsewhere.<sup>44</sup>

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<sup>41</sup>Ibid., pp. 31-32

<sup>42</sup>Ibid., p. 32.

<sup>43</sup>Ibid., p. 33.

<sup>44</sup>Ibid., p. 36.

This omission, he said, furthered the inconsistency of the Draft and did not guarantee the same rights to all minorities.<sup>45</sup>

He closed by saying that these amendments were rejected probably for the simple reason that they were U.S.S.R. Amendments. He remarked that:

Frequently our amendments are rejected on those grounds - not because they are unsuitable or unacceptable, but because they emanate from us. But the United Nations loses thereby and such international documents as are before us at the present time lose thereby, because it is documents such as these that are supposed to mobilize human forces throughout the world for the cause of humanity and the cause of peace.<sup>46</sup>

For these reasons, he stated, the present Draft Declaration of Human Rights as a document did not fulfill the demands or criteria such a document should which is concerned with the basic objectives of the United Nations. He declared it would be a mistake to adopt such a document without first improving many of the articles. Therefore, the U.S.S.R. delegation proposed that the General Assembly should not adopt the Declaration of Human Rights, but should postpone such adoption until the fourth regular session of the General Assembly which would give time enough for improving the Declaration to make it fulfill its noble aim.<sup>47</sup>

At this same session of the General Assembly Mrs. Eleanor Roosevelt arose to answer the charges of Mr. Vyshinsky. She

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<sup>45</sup>Ibid., p. 37.

<sup>46</sup>Ibid., p. 36.

<sup>47</sup>Ibid., pp. 38-40.

told him that not every man, nor every government, could have what he wanted in a document of this kind. Certain provisions of the document could be improved, she felt, but taken as a whole, the delegation of the United States believed it was a good document, even a great document, and they planned to support it in every way.<sup>48</sup>

As for the amendments proposed by the U.S.S.R. delegation, Mrs. Roosevelt said she felt it was an imposition for such amendments to be proposed again at that meeting, because they were the same in substance as the amendments proposed by the U.S.S.R. delegation in the Third Committee, and these had been rejected after exhaustive discussion. She noted that they were the same amendments previously considered and rejected by the Human Rights Commission.<sup>49</sup>

Mrs. Roosevelt stated further that the United States admired those who fight for their convictions and the U.S.S.R. delegations certainly had fought for theirs. But, she said, the older democracies had learned that it is sometimes necessary to bow to the will of the majority, because to have progress, it is better tactics to try to cooperate.<sup>50</sup>

It is evident that, with forty-eight countries voting for the Declaration of Human Rights, it has a large measure

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<sup>48</sup>Ibid., p. 57.

<sup>49</sup>Ibid.

<sup>50</sup>Ibid., pp. 57-58.

of world backing for the principles it sets forth. Not one country voted against it, and only eight abstained. A country or individual would be going contrary to the convictions of most members of the United Nations if it ignored these principles.<sup>51</sup>

"It's one thing to make a blueprint and quite another to build a house"; however, the United Nations is trying to see to it that these principles are accepted and applied everywhere. The Covenant which is in its final state of preparation will be submitted to the General Assembly in the fall of 1950. The Covenant and ways of implementation will be discussed in the following chapter. These two steps, when completed, will be the final stage of the International Bill of Human Rights.<sup>52</sup>

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<sup>51</sup>Our Rights As Human Beings, p. 19.

<sup>52</sup>Ibid., p. 17.



## CHAPTER IV

PROPOSED COVENANT, MEASURES FOR IMPLEMENTATION,  
AND PROBLEMS INVOLVEDA. Introduction

"One world is still possible," declares Herbert V. Evatt, Australian delegate to the United Nations. To have world peace, to provide for the progress of mankind to new heights, "one world" must be preserved. A positive policy based on the principles and purposes of the United Nations Charter is needed to bring this about. A world must be built and sustained in which people everywhere can live a peaceful life, and enjoy the human freedoms that are rightfully theirs. It must be a world in which an individual

. . . . can sleep peacefully at night, unafraid of a knock on his door by the police; . . . . is not spied upon by agents of the state in his ordinary business of life; . . . . is free to speak and read and write and publish as he pleases and to assemble at public meetings; . . . . is not accountable to any state official for his personal conduct or for his political beliefs.<sup>1</sup>

These aims can only be acquired by the world having peace - not peace at any price, but a peace founded on justice. The United Nations has the necessary machinery to remove international disputes, remove causes of frictions, and to settle differences. This was the main reason for the United Nations

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<sup>1</sup>Herbert V. Evatt, op. cit., pp. 235-236.

in the first place.<sup>2</sup> As has been stated before in this paper, the United Nations is endeavoring to promote international agreement on the essential freedoms of man through an International Bill of Human Rights. If this can be accomplished, it may well be the firm foundation needed for a lasting world peace.

A definite standard of achievement was reached by the United Nations when the General Assembly unanimously accepted the Universal Declaration of Human Rights in Paris, December 10, 1948. The "human rights and fundamental freedoms" talked about in the Charter had become well defined.<sup>3</sup>

The United Nations must now agree on a treaty or covenant, which, when accepted, will guarantee worldwide respect for human rights, and will provide for a means of enforcement. This chapter will be concerned with a discussion of the proposed Covenant, means of implementation, and some of the problems involved.

#### B. Drafting of the Covenant

On June 20, 1949, the Commission on Human Rights concluded its fifth session. This session had lasted for six weeks, and had managed to draft a provisional International Covenant on Human Rights. The Commission then submitted this draft to the member states of the United Nations for comment and suggestions.

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<sup>2</sup>Ibid., p. 241.

<sup>3</sup>How Can An International Human Rights Treaty Be Enforced?  
p. 17.

A formal draft will later be prepared from this provisional one and the suggestions received from the various Governments. It will then be forwarded to the Economic and Social Council for consideration. The Social Council will then submit it for final approval to the General Assembly at its 1950 fall session.<sup>4</sup>

As explained by Mrs. Franklin D. Roosevelt, Chairman of the Commission, the purpose of the Covenant was to make governments internationally answerable for violating the rights of the people they have sworn to protect. She declared further that the need was to protect people against arbitrary State action. Dr. Charles Malik, of Lebanon, Rapporteur of the Commission, said the Covenant would give the Governments a chance to put into law, and abide by, the lofty principles set forth in the Declaration.<sup>5</sup>

The Covenant will have the same status as any international treaty, and all states which ratify it will be legally bound by it. It will then move into the realm of international law. To the extent that international law effects internal law and practice, human rights will be given a support that they have never had in the past.<sup>6</sup>

This treaty on human rights was designated as a Covenant or Pact by the members of the Commission because of the impor-

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<sup>4</sup>Dr. Charles Malik, "The Covenant on Human Rights," Reprinted from United Nations Bulletin, (July 1, 1949), p. 13.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid., p. 5.

tance of the venture. The ratifying states will be entering into a solemn compact to see to it that their governments actually put into practice the rights and freedoms defined in the Covenant. Human rights in all countries will thus be made the common concern of all the covenant states, whereas, before this, the matter of human freedoms was the exclusive problem of the individual states.<sup>7</sup> However, the Covenant will be no stronger legally than any other international treaty, and any of the signatory states guilty of violating any of the terms will be subject to the same consequences as those which would follow the disregard of any international treaty.<sup>8</sup>

It had been generally agreed by the Commission on Human Rights, by the time of their last session, that there must be an International Covenant in order to make it international law, but there had not been general agreement as to the scope of the Covenant. Since the Declaration was a total platform which covered all of the rights of man, there was the question of whether or not the Covenant should cover the same rights. There was sharp disagreement among the representatives to the Commission as to what rights should be included.

The plan originally sponsored by the United Kingdom covered only the basic individual and civil rights: freedom from torture, slavery, servitude and arbitrary arrest; freedom of movement, of thought and of religion, and freedom of assembly

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<sup>7</sup>Ibid.

<sup>8</sup>Ibid., p. 6.

and association. Up to the present time the Covenant has followed this pattern. Australia and Russia wanted the Covenant to include social and economic rights, but France wanted social and economic rights to be in a later covenant. A Danish proposal, accepted by the Commission on June 17, called for the Economic and Social Council to ask the Secretary-General to make a study in the economic and social fields. This report would then help the Commission to decide whether or not economic and social rights should be included in the present Covenant or in a later one. The Commission will wait until this report is received before going further with this problem.<sup>9</sup>

Another problem which faced the Commission in the drafting of a Covenant that would be satisfactory to all was whether or not to write a brief article of rights and freedoms with a general statement of possible limitations, or to write an article with a catalogued list of all possible limitations and exceptions pertaining to that article. The United States wanted to use the first method because her delegation felt that it would be impossible to specify all the limitations a provision would encounter, and each Government must have some leeway in handling each case. However, the United Kingdom wanted to use the second method. Her delegation argued that such a Covenant must have a complete listing of limitations for each article because a signatory Government would always know the extent of its international

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<sup>9</sup>Ibid.

obligations in regard to human rights, and would not be able to introduce arbitrary limitations. So far, the Commission has followed a middle-of-the-road policy in regard to these two methods.<sup>10</sup>

A third problem which confronted the Commission was the right to complain about violations. It generally agreed that signatory states, regardless of the system of implementation eventually adopted, should have the right to petition for proceedings against violations of human rights. The Commission could not reach an agreement when it came to the question of the right of individuals, groups, and organizations to make similar petitions.<sup>11</sup>

The smaller nations were strongly in favor of the right of individuals to take their grievances to an international body, because sovereignty actually rests with the people and cases are not confined to states. They furthered their argument by saying that countries could not be relied upon to present cases of violations which occurred within their borders unless there was an effective system of inspection. They felt that it would be hard to get countries to agree to a Covenant if there were to be an inspection system.<sup>12</sup>

The argument for limiting the right of petition to states, mainly sponsored by Russia, was that this method would

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<sup>10</sup>Ibid., pp. 7-8.

<sup>11</sup>Ibid., p. 8.

<sup>12</sup>How Can An International Human Rights Treaty Be Enforced?  
p. 20.

not interfere with independent national sovereignty, or the domestic law system of a signatory state. The argument for allowing organizations or associations the right to make petitions for violations was that if properly operated, organizations could lift the burden from an international body and help make individual petitions effective.<sup>13</sup>

On June 17, the Commission approved a resolution presented by Guatemala, India and the Philippines. This resolution stated that because of "the importance and urgency of the question of the right of individuals, groups and organizations to petition in the case of violations of human rights" and "that a further study of this question is desirable in its continued efforts to establish a practical procedure for handling petitions," the Commission should request the Economic and Social Council to ask the Secretary-General:

. . . . (a) to prepare a study on this question, including the receivability and the preliminary examination of petitions . . . . and (b) to examine the communications concerning human rights received by the United Nations with a view to submitting to the Commission on Human Rights for consideration at its next session such communications as may be receivable under the conditions suggested in the study referred to in paragraph (a).

The Commission decided to wait until it received this report before proceeding with this phase of the Covenant.<sup>14</sup>

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<sup>13</sup>Ibid.

<sup>14</sup>Dr. Charles Malik, op. cit., p. 9.



The most serious objection heard during this session of the Commission came from the U.S.S.R. delegate on the closing day. He expressed extreme pessimism and disappointment because the Commission had not included and discussed economic and social rights. Mrs. Franklin D. Roosevelt stated that she wondered if the U.S.S.R. actually were interested in a basis for agreement. She said that she suspected that Russia would not care much if the Covenant were ratified by only a small number of nations.<sup>15</sup>

### C. Problem of Implementation

Perhaps the most important issue facing the Commission on Human Rights is the problem of setting up ways to implement an International Covenant on Human Rights. Less has been done on this section of the International Bill because it is the last step. The most controversial question to which the Commission will have to find an answer is as to where national responsibility for guaranteeing human rights ends and where international responsibility begins. Other questions which will have to be answered are: what method shall be used to call to the attention of the signatory powers of the Covenant and to the entire United Nations the violations of human rights? Shall complaints be heard from only the countries themselves, or only from individuals, or just from organizations? Shall special

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<sup>15</sup>Mrs. Franklin D. Roosevelt, "Importance of the Covenant," Reprinted from United Nations Bulletin, (July 1, 1949), p. 5.

machinery be inaugurated to handle charges of human rights violations? Where shall complaints be reported? What this eighteen-member Commission eventually recommends remains to be seen because measures will have to be adopted which will be acceptable to the majority of the members of the United Nations.<sup>16</sup>

There have been many proposals received by the Commission from various countries. Different approaches to the problem have been suggested to bring about the desired objectives.

France proposed that an eleven-member commission should be chosen by a two-thirds majority vote of the General Assembly to which human rights violations should be reported. The commission would be given the power by the General Assembly to make direct recommendations to the parties involved. Under this plan, both individuals and states would have the right to petition.<sup>17</sup>

The United States and the United Kingdom suggested that a fact-finding committee should be set up which would deal with the countries involved, after direct negotiation attempts had failed. This proposal called for the committee to be made up of persons of "high moral character and suitable ability" who would be appointed by the ratifying states of the Covenant. The Secretary-General would keep a panel of eligible members for

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<sup>16</sup>How Can An International Human Rights Treaty Be Enforced?  
pp. 18-19.

<sup>17</sup>"Report of the Fifth Session of the Commission on Human Rights," Economic and Social Council Official Records, Supplement No. 10, United Nations Publications, (June 23, 1949), p. 42.

this committee. When a committee was needed, five persons would be chosen from this panel by a majority vote, and representatives from both countries involved would be included on the committee. Any dispute of a legal nature would be referred to the International Court of Justice. Only Covenant states, not individuals, could file petitions with this committee.<sup>18</sup>

An entirely different view was taken by the Russian delegation in their proposal. They declared that the matter of implementation of the Covenant was solely the business of each individual state, and should be carried out according to each state's interpretation of the rights and freedoms listed therein. Consequently, they argued that there was no need for setting up any new international machinery for the purpose of ensuring the fulfillment of these rights and freedoms.<sup>19</sup>

A method not discussed by, or submitted to, the Commission on how national states of member nations of the United Nations might give legal sanction to such a Covenant, was presented to the world in a California Court of Appeals during the first week of May, 1950. This Court established a precedent by throwing out a California law which conflicted with the Charter of the United Nations. In the Case of Sei Fujii, a Japanese who could not get a clear title to some Los Angeles real estate he had bought because of the California Alien Land Act, a Los Angeles

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<sup>18</sup>Ibid., p. 48.

<sup>19</sup>Ibid., p. 47.

attorney convinced the three appeal judges that the law, supported by state and federal courts for thirty years, conflicted with the Charter of the United Nations.

Judge Emmett Wilson wrote in the court's decision:

The position of this country in the family of nations . . . demands that every state in the Union accept and act upon the (U.N.) Charter according to its plain language.

The Charter states that it is the intention of the United Nations "to reaffirm faith in fundamental human rights" and pledges all the signers to guarantee such rights "without distinction as to race, sex, language or religion." The judges declared that the Charter, like any international treaty entered into by the United States, is now

. . . the supreme law of the land . . . paramount to every law of every state in conflict with it. The Alien Land Law must therefore yield to the treaty as the superior authority. . . .<sup>20</sup>

Of all the proposals made to the Commission, it seems to the writer of this paper that the one submitted by Australia has the most merit, and would more nearly meet the desired objectives of the Covenant. Australia recommended that a new six-member International Court of Human Rights should be created to hear all such violations. It called for the signatory powers of the Covenant to enforce the decisions of the Court, and if they did not carry them out, the party who originally filed the charge, or the Commission on Human Rights should refer the dispute to the General Assembly.

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<sup>20</sup>"Superior Authority," Time Magazine, LV, No. 19 (May 8, 1950), p. 21.

Men of the highest moral character and men who could qualify for the highest judicial offices of their native land would be elected to this Court, regardless of nationality. The Economic and Social Council would recommend the judges to the General Assembly for final approval by majority vote. One candidate for judge could be nominated by each member of the United Nations. This Court would be in permanent session; and nations, individuals, groups of individuals, and organizations would all be given the right of petition. The Court would also render advisory opinions on any human rights question at the request of the Commission.<sup>21</sup>

On the problem of implementation, the Commission has received little opposition so far on proposals that call for boards of inquiry, fact-finding committees, conciliation boards, and public censure. The opposition has come mainly from the U.S.S.R., who does not want any kind of international enforcement, and from countries that favor the Australian plan, which calls for an International Court of Human Rights. It seems that the majority of nations prefer conciliation methods because they argue that the observance of human rights must come from the people themselves. They feel that in the long run persuasion is the best method to encourage respect for man's rights throughout the world.<sup>22</sup>

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<sup>21</sup>Report of the Fifth Session of the Commission on Human Rights, pp. 36-41.

<sup>22</sup>How Can an International Human Rights Treaty Be Enforced?, p. 20.

The writer agrees that this argument is logical, but throughout the centuries the majority of the people of the world have had little respect shown for their inalienable human rights, and this is still true in the twentieth century. If an International Court of Human Rights were set up to handle nothing but cases involving the violations of human rights, it might help to bring about a stage in the evolution of civilization that is long overdue.

A question on which the people of the United States must decide is, which of these methods of implementation of the Covenant should the United States agree to support? Although our Constitution guarantees to the people civil and political rights, in many areas of the country these rights are being violated. If the United States ratifies the Covenant, an international body would have the power to hear the cases of such violations. The United States delegation to the Commission of Human Rights suggested that such measures should be in the Covenant; however, would Congress be willing to accept such a method?<sup>23</sup>

#### D. Conclusion

Throughout the preceding chapters, it has been the intention of the writer to discuss briefly the historical background of the human rights doctrine and the degree of observance of human rights in the two greatest nations of today, Russia and

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<sup>23</sup>Ibid.

the United States. It was also intended to review the efforts made by the United Nations through the Commission on Human Rights to try to build an international structure that will shelter the rights of every human being everywhere. As was explained in the two preceding chapters, the job of drafting an International Bill of Human Rights has reached approximately the half-way mark. The Draft Declaration, which defined all of man's rights, has already been accepted by the United Nations; the Covenant, which will give the International Bill the status of international law, is in the final stages of drafting; and the last phase - the measures of implementation - has received a great deal of study and consideration.

Although a great deal of work remains to be done, although the international atmosphere is filled with tensions of war and ideological differences, there is still hope for the final outcome. The Human Rights Commission, with the untiring aid of the Secretary-General and the support of the General Assembly, has worked very hard and planned very thoroughly all stages of the work. It seems very probable that an International Bill of Human Rights will be completed ultimately.

The road traveled so far in this quest for an International Bill of Human Rights has not been an easy one. It took men and women with a vision of a better world to overcome the tremendous obstacles and difficult negotiations. Regardless of the final outcome, one great achievement has already been realized. For the first time in the history of mankind man has come to occupy



a place in the field of international affairs which in the past has been occupied exclusively by states. As stated by Dr. Ricardo Alfaro of Panama, one of the Rapporteurs of the San Francisco Conference: "In the same degree as the State, the individual is the object of international legislation."

When the United Nations finally accepts the International Bill of Human Rights in its completed form, it is hoped that the resulting revolution will not only raise the status of the human family, but will also strengthen the United Nations, and international cooperation, because of the strengthening of the ties between people everywhere. It is quite obvious then, that efforts to insure international protection of human rights will help to fulfill the three purposes of the United Nations Charter - "to encourage the respect for these rights . . . . to develop friendly relations between nations . . . . and to maintain international peace and security."

It is possible that when the International Bill of Human Rights has been put into effect, nations will be influenced by it in improving their conduct toward observance of human rights in legislation and court decisions. Public-spirited citizens could do much in their own towns and cities in erasing inequalities, discriminations, and oppressions. Political leaders might realize, the first time for many of them, that human rights are closely related to practically every political problem. Men who are responsible for a nation's foreign policy may be induced to fill their discussions

over controversial situations with the argument for the cause of freedom.

Because governmental leaders in a democracy reflect to a large degree the thinking of their people, it is felt that an International Bill of Human Rights would help people to think about international problems with a view toward the rights and freedoms of the people involved, and thus encourage the settlement of international problems on the basis of their actual meaning, instead of by the use of the traditional type of negotiation. A greater number of people might be made to realize that there are many different kinds of religions, cultures and political outlooks in the world. A better understanding of peoples in other countries would help to make an International Bill of Human Rights more effective.

When people know that there is an international order which will protect them from deprivations, which will secure opportunities for their welfare, and will assure them the benefits of world trade and world stability, they will not hesitate to criticize their own governments constructively. Such a feeling is a necessity for the well being and progress of the family of nations.

If the dream of those who have struggled for an International Bill of Human Rights comes true, its full realization will cause a concentration on human rights and fundamental freedoms in international and domestic affairs that will erect a world order based on peace and justice.

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## APPENDIX

VAL-KILL COTTAGE  
HYDE PARK, DUTCHESS CO.  
NEW YORK

March 17, 1950

Dear Mr. Wheeler:

The great difficulty in writing an international document is language. A word in English, let us say, cannot always be translated literally. The U.S.S.R. objected to "all men are created Equal." The U.S.S.R. delegate objected to "created" so we changed the wording to "born equal."

The Pakistan delegate objected to "all men" and insisted it be "everyone" or "no one" because in Pakistan where only a few women have won recognition it would mean "all men" but not "all women."

The French offered objections because in their code of law they have differences.

In the final analysis the U.S.S.R. and satellites abstained from voting because the document was not progressive enough and Africa abstained because it was too progressive. However, I feel that having 48 nations vote to accept the Universal Declaration of Human Rights was a real accomplishment.

Very sincerely yours,

/s/ Eleanor Roosevelt

THESIS TITLE: A Study of Human Rights

NAME OF AUTHOR: Clyde A. Wheeler, Jr.

THESIS ADVISER: R. E. Powers

The content and form have been checked and approved by the author and thesis adviser. "Instructions for Typing and Arranging the Thesis" are available in the Graduate School office. Changes or corrections in the thesis are not made by the Graduate School office or by any committee. The copies are sent to the bindery just as they are approved by the author and faculty adviser.

NAME OF TYPIST: Carolyn Leonard